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# **FISCAL YEAR 2022 ANNUAL REPORT IRS WHISTLEBLOWER OFFICE**

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## SCOPE OF THE REPORT

The Tax Relief and Health Care Act of 2006 (TRHCA 2006) requires the Internal Revenue Service (IRS) to conduct an annual study and report to Congress on the use of Internal Revenue Code (IRC) Section 7623. IRC Section 7623 provides for awards, in some cases mandatory, when the IRS takes action based on a whistleblower's information. Claims for award that provide specific and credible information regarding tax underpayments or violations of laws which the IRS is authorized to enforce, investigate, or administer and that lead to proceeds collected may qualify for an award. This report covers the period from October 1, 2021 through September 30, 2022.

# IRS MISSION

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

## IRS VALUES

- **Honesty and Integrity:** We uphold the public trust in all that we do; we are honest and forthright in all of our internal and external dealings.
- **Respect:** We treat each colleague, employee and taxpayer with dignity and respect.
- **Continuous Improvement:** We seek to perform the best that we can today, while embracing change, so that we can perform even better in the future.
- **Inclusion:** We embrace diversity of background, experience and perspective.
- **Openness and Collaboration:** We share information and collaborate, recognizing that we are a team.
- **Personal Accountability:** We take responsibility for our actions and decisions and learn and grow from our achievements and mistakes.

## IRS WHISTLEBLOWER OFFICE MISSION

To effectively administer the IRS Whistleblower Program by ensuring:

- IRS compliance functions receive and consider specific, timely, and credible whistleblower claims that identify non-compliance with tax laws or other laws the IRS is authorized to administer, enforce, or investigate;
- Whistleblowers receive required notifications timely; and
- Awards are fairly determined and timely paid.

## IRS WHISTLEBLOWER OFFICE VISION

To effectively promote voluntary compliance and reduce the tax gap by providing excellent service to whistleblowers, taxpayers, and other stakeholders.

# MESSAGE FROM THE DIRECTOR

## THIS YEAR'S REPORT

The Fiscal Year (FY) 2022 Report covers the period October 1, 2021, through September 30, 2022. New in this year's report, we've provided information showing a 10-year history of awards, the whistleblower claim processing flowchart, average claim processing time by major process, an analysis of length of time for various claim processes, and a 5-year analysis of claims built and submissions received. In addition, we've included more information on administrative priorities for the Whistleblower Program.

## FY 2022 RESULTS<sup>1</sup>

In FY 2022, the IRS paid whistleblowers 132 awards totaling \$37.8 million from proceeds collected of \$172.7 million. The total dollar amount of awards paid increased from FY 2021 when \$36.1 million in awards were paid. The total number of awards paid in FY 2022, however, decreased from 179 in FY 2021 to 132 in FY 2022. Awards paid as a percentage of proceeds collected increased from 14.7% in FY 2021 to 21.9% in FY 2022.

IRC Section 7623(b) award results increased in FY 2022 to 26 awards paid totaling \$34.5 million attributable to proceeds collected of \$152.7 million. That compares to 20 awards paid totaling \$27.3 million attributable to proceeds collected of \$115.3 million in FY 2021.

IRC Section 7623(a) award results decreased in FY 2022 to 106 awards paid totaling \$3.3 million attributable to proceeds collected of \$20.0 million. In FY 2021, 159 IRC Section 7623(a) awards totaling \$8.8 million attributable to proceeds collected of \$130.0 million were paid.

Average claim processing time (the time from the date a claim is received to the date an award is paid) for IRC Section 7623(b) award payments made during FY 2022 increased by 1.3% from the prior year and average claim processing time for IRC Section 7623(a) award payments increased by 14.9%. The time for paying a claim is heavily dependent on compliance actions taken with a taxpayer, the taxpayer's exercise of rights to request assistance from the Independent Office of Appeals or to litigate disagreements with the IRS's determination, the time it takes to collect any proceeds attributable to the whistleblower, and the time for a final determination of tax.

In FY 2022, the Whistleblower Office received 5,084 submissions and built 12,597 claims. That is very similar to FY 2021 when we received 5,080 submissions and built 14,045 claims.

In FY 2022, we issued 4,115 notices to whistleblowers as required by the Taxpayer First Act (TFA). The TFA provided an exception to the non-disclosure rules in IRC Section 6103 to allow notifications to whistleblowers when a claim is referred for examination, when a taxpayer makes payments related to a tax liability attributable to information provided by the whistleblower, and to allow the IRS to share information on the status and stage of a taxpayer case related to a whistleblower claim. Although the Whistleblower Office created a new team and hired four

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<sup>1</sup> Values have been rounded throughout the document for ease of reference.

additional employees to focus on the new TFA notices in FY 2021, the notice process has been more time-intensive than originally expected. The Whistleblower Office continuously evaluates and shifts its allocated resources to meet requirements for TFA notices.

## EFFORTS TO IMPROVE THE WHISTLEBLOWER PROGRAM

Since I started as the new director of the Whistleblower Office in May 2022, the Whistleblower Office has been focused on opportunities to improve the program. We've received input from both internal and external stakeholders. External whistleblower practitioners have provided many ideas for improvement, and we continue to consider those ideas as we develop our plans.

We've added information to this year's report on steps we've already taken and will be taking in the future to improve the program. Our key goals include increasing the capacity for claim submissions that the IRS can act on, using high-value whistleblower information effectively, rewarding whistleblowers fairly and as soon as possible, keeping whistleblowers informed of the status of their claim and the basis for IRS decisions on claims, and strengthening collaboration with Whistleblower Program stakeholders.

## THE VALUE OF WHISTLEBLOWER CONTRIBUTIONS

Our nation's tax system is built on the principle of voluntary compliance. When this principle is observed, taxpayers file tax returns and pay their taxes timely and accurately without the need for compliance activity by the IRS. Voluntary compliance is aided by the knowledge that non-compliance with tax laws will be addressed through examinations, collection activities, criminal investigations, and other tax enforcement work. The IRS uses increasingly sophisticated data analytics and other methods to detect non-compliance with tax laws, but we can't find it all by ourselves. We need help from whistleblowers – people with firsthand knowledge of non-compliance who are willing to share what they know with us so we can investigate it when warranted.

We appreciate the valuable contributions that thousands of whistleblowers have made to help bolster the fair and effective enforcement of our nation's tax laws and the success of our voluntary tax system. Since 2007, the Whistleblower Office made awards of \$1.1 billion based on the collection of \$6.6 billion. Currently, the Whistleblower Office is monitoring for the collection of several billion dollars in additional amounts assessed attributable to information submitted by whistleblowers. The continued success of the IRS Whistleblower Program is dependent on people who become aware of tax fraud and tax non-compliance and report that information to the IRS Whistleblower Office, and on the dedicated IRS workforce that supports this important program.

We encourage all individuals with specific and credible information about tax noncompliance to provide this information to the IRS by filing a claim on [Form 211, Application for Award for Original Information](#), with the Whistleblower Office.



**John W. Hinman**

Director, Whistleblower Office



# FY 2022 SNAPSHOT

**OVER  
\$1 BILLION**

Potential proceeds (amounts assessed attributable to whistleblowers) grew by **over \$1 Billion** during the Fiscal Year

**21.9%**

Average Award % increased from 14.7% in Fiscal Year 2021 to **21.9%** in Fiscal Year 2022

**21.3 DAYS**

On average, new submissions were processed within **21.3 days** of receipt

**\$172.7  
MILLION**

Awards Paid in Fiscal Year 2022 are based on **\$172.7 Million** in proceeds collected attributable to whistleblower information

**12,597**

Claims built in Fiscal Year 2022

**68 DAYS**

On average, IRC Section 7623 (b) Awards were paid within **68 days** of the date when all regulatory requirements were met

**4,115**

TFA notifications sent

# BACKGROUND AND PROGRAM EVOLUTION

TRHCA 2006 added IRC Section 7623(b), which enacted significant changes in the IRS award program for whistleblowers. The TRHCA 2006 set a new framework for the consideration of whistleblower submissions and established the Whistleblower Office within the IRS to administer that framework. The TRHCA 2006 requires that the Secretary of the Treasury conduct an annual study and report to Congress on the use of IRC Section 7623. The annual study and report to Congress includes any legislative or administrative recommendations for IRC Section 7623 and its application. This report discusses the IRS Whistleblower Program activities for FY 2022 in satisfaction of the reporting obligation under the TRHCA 2006.

The Whistleblower Office analyzes information submitted, coordinates with other IRS business units, and makes award determinations. If a submission does not meet the criteria for IRC Section 7623(b), the Whistleblower Office may consider it for an award pursuant to its discretionary authority under IRC Section 7623(a). A whistleblower must meet several criteria to qualify for the IRC Section 7623(b) award program. The information must be:

- Signed and submitted under penalties of perjury;
- Related to an action in which the proceeds in dispute exceed \$2,000,000; and
- If the subject of the claim is an individual, the individual's gross income must also exceed \$200,000 for any taxable year subject to such action.

If the information meets the above criteria and substantially contributes to an administrative or judicial action that results in the collection of proceeds, the IRS will generally pay an award of at least 15%, but not more than 30% of the proceeds collected. The award percentage decreases for cases based principally on information disclosed in certain public sources or when the whistleblower planned and initiated the actions that led to the tax law violations. Whistleblowers may appeal the Whistleblower Office's award determinations under IRC Section 7623(b) to the United States Tax Court (USTC).

The IRS pays awards from proceeds collected and as such, award payments cannot be made until the taxpayer has exhausted all appeal rights and the taxpayer no longer can file a claim for refund or otherwise seek to recover the proceeds from the government. Therefore, the IRS generally cannot make award payments for several years after the whistleblower has filed a claim.

## AUGUST 2014

On August 12, 2014, the Treasury Department and the IRS published final regulations providing comprehensive guidance for the IRS Whistleblower Program under IRC Section 7623. The regulations also provided guidance on submitting information regarding underpayments of tax or violations of the internal revenue laws and filing claims for award, as well as on the administrative proceedings applicable to claims for award under IRC Section 7623. The regulations also provided guidance on the determination and payment of awards; and defined key terms used in IRC Section 7623. Finally, the regulations confirmed the Director, officers, and employees of the Whistleblower Office are authorized to disclose return information to the extent necessary to conduct whistleblower administrative proceedings.

## FEBRUARY 2018

On February 9, 2018, Section 41108 of the Bipartisan Budget Act of 2018 (BBA 2018) amended IRC Section 7623, which added a new subsection:

- (c) Proceeds – For purposes of this Section, the term ‘proceeds’ includes —
- (1) penalties, interest, additions to tax, and additional amounts provided under the Internal Revenue laws, and
  - (2) any proceeds arising from laws for which the Internal Revenue Service is authorized to administer, enforce, or investigate, including —
    - (A) criminal fines and civil forfeiture, and
    - (B) violations of reporting requirements.

BBA 2018 also amended IRC Section 7623(b)(5)(B) to limit IRC Section 7623(b) to cases in which the "proceeds" in dispute exceed \$2,000,000.

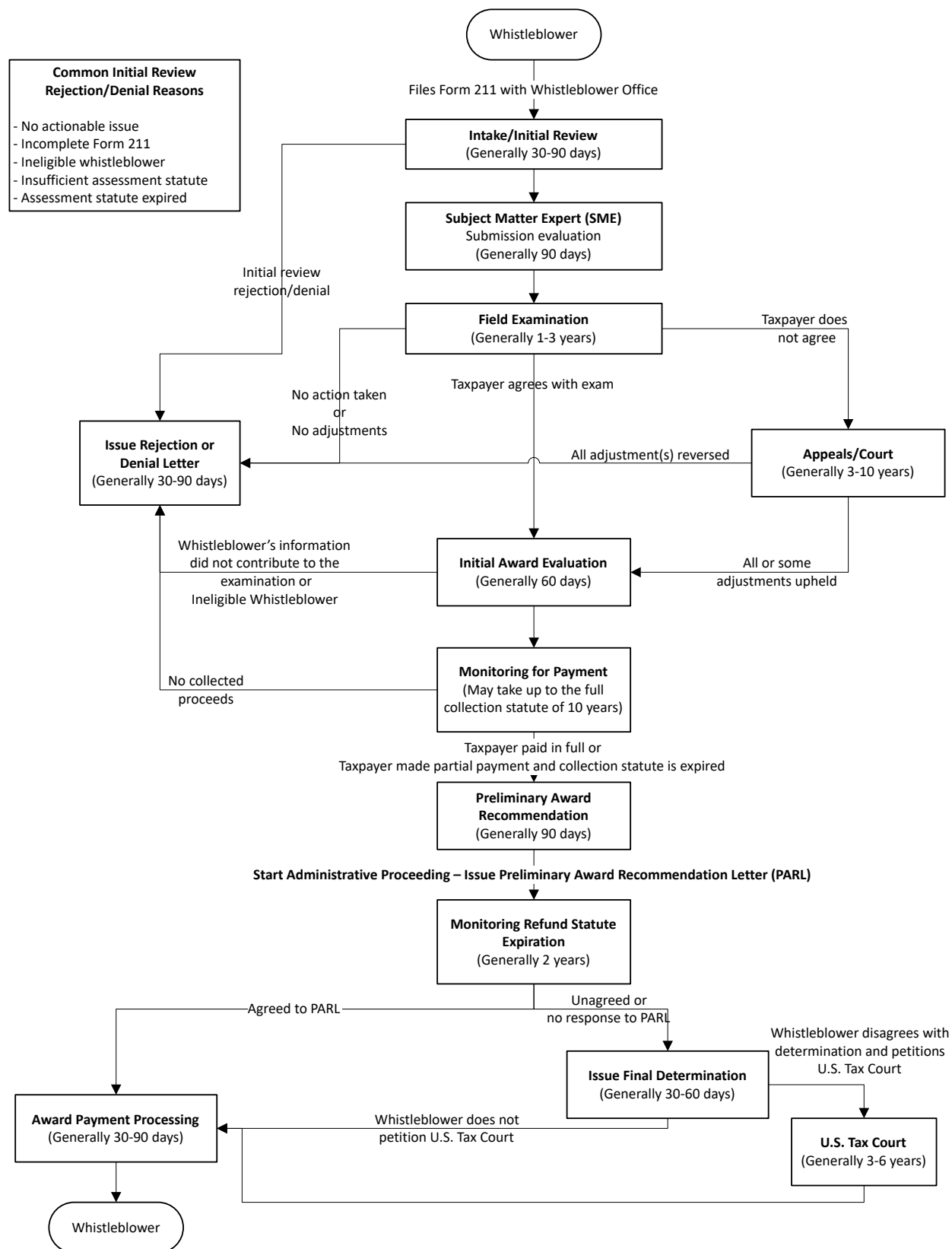
## JULY 2019

On July 1, 2019, Section 1405(a) of the TFA 2019 amended IRC Sections 7623 and 6103 to add several important provisions to help improve whistleblower service and to ensure the continual enforcement of the tax laws in a fair and impartial manner. In addition, TFA 2019 created protections for whistleblowers against retaliation.



# WHISTLEBLOWER CLAIM PROCESS OVERVIEW

FIGURE 1: CLAIM PROCESSING FLOW CHART



**Figure 1** illustrates the IRS whistleblower claim process with general time frames for various stages of the process. This outline demonstrates how there can be such a disparity in processing times of different claims.

A claim generally has a shorter cycle time from receipt of the Form 211 to payment of the award if the taxpayer agrees at the closure of the examination, if the taxpayer promptly pays the assessment, and if the whistleblower agrees with the award determination.

Claim processing delays may occur if the examination is expanded into multiple years/related entities, if the taxpayer(s) disagree and appeal/litigate the assessment, if the taxpayer takes the full collection statute of limitations time to pay in full, if the examination issues have a longer refund statute instead of the general two years, or if the whistleblower litigates the award determination.

Other contributing factors to claim processing delays include instances of multiple whistleblowers and delayed submission of supplemental information. In cases of multiple whistleblowers involving a single administrative or judicial action, the claim cannot be paid until either all whistleblowers agree with the determination or litigation by any/all of the whistleblowers is resolved. If a whistleblower submits supplemental information after the actions have concluded or during the litigation of their award determination, then the claim processing is delayed.

# PROGRAM DEVELOPMENTS

## OPERATIONS

The Whistleblower Office considers its internal controls and quality assurance to be a top priority. In FY 2022, the Whistleblower Office successfully completed two internal reviews performed by the IRS Office of the Chief Financial Officer (CFO). The reviews covered the Protection of Whistleblower Information and Form 211 Acknowledgement Letter Processing Timeframes. Upon completion of these internal reviews, it was determined the Whistleblower Office is exhibiting effective internal controls and that no material deficiencies exist. No recommendations were presented to the Whistleblower Office for further consideration.

Like other organizations and businesses, the Whistleblower Program operations continued to be impacted by the ongoing Coronavirus pandemic. This caused a slowdown in Whistleblower Program operations including intake processing, classification, payment processing, litigation, TFA notifications, and closures. Most Whistleblower Program operational processes have been fully restored, and the Whistleblower Office is continuing to process claims to the greatest extent possible including receiving information, providing notifications required by TFA 2019, issuing determination letters, and the processing of awards.

On March 27, 2020, H.R. 748, Coronavirus Aid, Relief and Economic Security Act (CARES 2020) was signed into law. The enactment of CARES 2020 modified certain provisions with respect to Net Operating Losses (NOL). A NOL is created when a qualifying entity's excess tax deductions for the tax year exceeds its taxable income for that year. Under CARES 2020, a NOL from a tax year beginning in 2018, 2019, or 2020 can be carried back five years by any taxpayer entitled to a NOL deduction under IRC Section 172. This may create a significant increase in the processing time for any claim with a tax year that falls within these carryback periods. The final determination of tax date for these periods are governed by the carryback years and the respective statutes for those years. If there are losses carried back, then additional time may be necessary to monitor for collection of proceeds. FY 2022 award processing and determinations continued to be impacted by CARES 2020.

The Whistleblower Office continues to apply sequestration to all award payments in accordance with the Budget Control Act of 2011, as amended by the American Tax Relief Act of 2012. This requires automatic reductions with respect to certain government payments including whistleblower award payments made under IRC Section 7623. The required reduction percentage is determined annually by the Office of Management and Budget for the year in which payments are made. The Whistleblower Office communicates the amount and nature of the reduction with respect to the award determination in the Preliminary Award Recommendation Letter, Detailed Report (when applicable), Final Award Letter, and annual sequestration rate notices.

The Whistleblower Office adopted a policy permitting the disaggregation of eligible claim submissions in an effort to issue award payments earlier. Disaggregation is when the Whistleblower Office breaks away one or more individual claim numbers from a larger claim submission for a final determination. This may occur when a claim submission is not ready for an award determination but one or more claim numbers in the claim submission are eligible for an award determination.

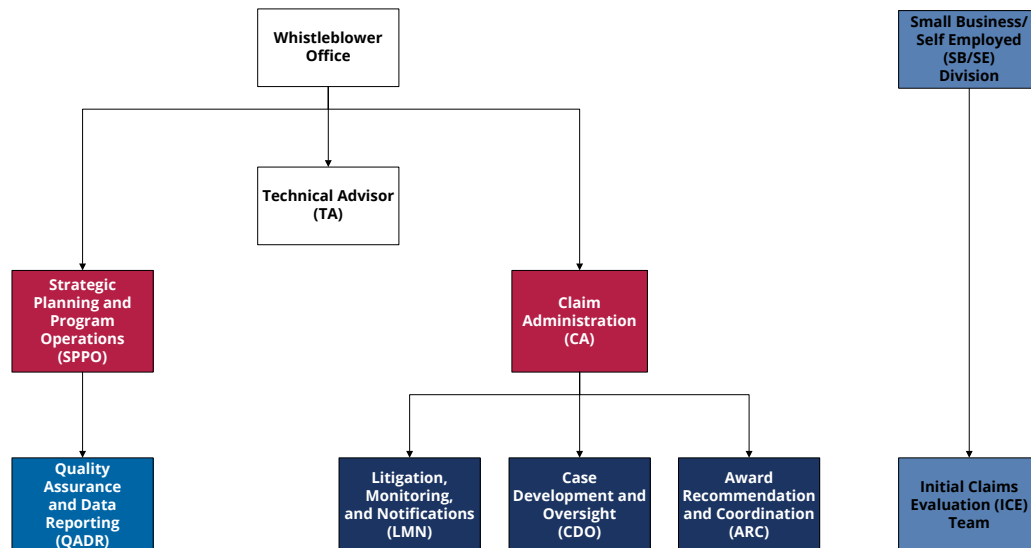
There are many reasons a claim submission may not be ready for an award determination (e.g., some claim numbers in the submission are still undergoing an administrative or judicial action, being monitored for collection or appeals, or waiting for a collection or refund statute to expire). Once the Whistleblower Office identifies eligible claim number(s), the Whistleblower Office may disaggregate them from the claim submission and then proceed with an administrative proceeding for the disaggregated claim numbers, including a final determination on the disaggregated claim. The determination is only final and applicable to the disaggregated claim. A separate determination will be made for the remainder of the whistleblower's claim submission.

In some cases, individuals submit multiple claims relating to the same information. In other cases, whistleblowers submit numerous claims based entirely on publicly available information—some whistleblowers have submitted hundreds of such claims. To date, the Whistleblower Office has sought to process and respond to all claims filed by whistleblowers. While it will continue to do so, the Whistleblower Office will also continue to look for ways to address duplicative or non-meritorious claims in a summary manner, both to focus its administrative resources better and further safeguard whistleblower and taxpayer return information.

# STAFFING

In FY 2022, the Whistleblower Office staff was comprised of 47 full-time employees with decades of experience from a broad array of IRS compliance programs. **Figure 2** below explains the organization of the Whistleblower Office.

**FIGURE 2: WHISTLEBLOWER OFFICE & ICE TEAM ORGANIZATION CHART**



The Whistleblower Office is led by the Director of the Whistleblower Office. In FY 2022, the Whistleblower Office transitioned from having one Deputy Director to two Associate Directors – one over the Strategic Planning and Program Operations function and the other over the Claim Administration function.

The following outlines the primary duties of the functions listed in **Figure 2**.

- SPPO is responsible for administration of budget, policy and procedure guidance, personnel, staffing activities, and strategic planning for the Whistleblower Office.
- QADR provides quality assurance reviews of various aspects of the Whistleblower Program, data validation, and preparation of the Annual Report to Congress.
- CA is primarily responsible for direction, guidance, and oversight of LMN, CDO, and ARC.
- LMN provides litigation support, payment monitoring, and required TFA 2019 Notifications for the Whistleblower Office.
- CDO is responsible for reviewing and developing information submitted by whistleblowers, coordinating with the operating divisions (OD), and issuing complex award determination.
- ARC provides award processing for the Whistleblower Office by reviewing examination results to evaluate the whistleblower’s contribution and issues award determinations.

The ICE Team, aligned under the Small Business/Self-Employed operating division, acts as the primary receipt and control function responsible for performing whistleblower claim intake, monitoring, and award payment processing.

# OUTREACH AND COMMUNICATIONS

The Whistleblower Office maintains a page on the IRS Intranet for IRS personnel and provides articles for internal newsletters and speakers for professional education events. There is also a dedicated page on the IRS website, [irs.gov](https://www.irs.gov/whistleblower)<sup>2</sup>, that provides information for the public about the Whistleblower Program. The website includes links to the final regulations, the Form 211, and contains other useful information for whistleblowers. In addition, the Whistleblower Office wrote *A Closer Look article*<sup>3</sup> on how whistleblower information contributes to identifying noncompliance and reducing the tax gap.

In FY 2022, the Whistleblower Office updated Publication 5251, The Whistleblower Claim Process and Timeline, which provides information on filing a whistleblower claim for award, the timeline for each step in the claim process, and instructions for whistleblowers to obtain information about the status and stage of their claim(s).

The Whistleblower Office has continued its outreach efforts utilizing IRS social media accounts, as well as publicly subscribed newsletters. The Whistleblower Office continues to utilize Twitter, @IRSNews, @IRStaxpros, and the E-Tax Professionals Newsletter that continues to garner many views. The Whistleblower Office also shares relevant information regularly with stakeholders who have signed up to receive information periodically from the Whistleblower Office.

Whistleblower Office representatives deliver presentations to professional groups and conferences. By attending these functions, the Whistleblower Office obtains an outside perspective on the Whistleblower Program. The Whistleblower Office also provides consultation to other federal agencies and tax administration authorities from other nations, as they evaluate options for their own whistleblower award programs. In July 2022, representatives from the Whistleblower Office met with a foreign delegation to learn about their plans with whistleblower programs and share information about the general administration of the IRS's whistleblower program.

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<sup>2</sup> <https://www.irs.gov/whistleblower>

<sup>3</sup> <https://www.irs.gov/about-irs/the-irs-whistleblower-office>

# ADMINISTRATIVE PRIORITIES AND ISSUES OF INTEREST

## ADMINISTRATIVE PRIORITIES

**Collaboration:** The Whistleblower Office is increasing collaborative efforts to improve the Whistleblower Program. We are working with other IRS business units to ensure whistleblower information is effectively utilized. For example, we are part of the IRS's Joint Strategic Emerging Issue Team. We've also been gathering feedback from external practitioners and whistleblowers. A formal Whistleblower Summit was held on October 20, 2022, at IRS headquarters with the whistleblower community and leaders from various IRS business units to share information and best practices and to gather additional feedback. The Summit was opened by the IRS Commissioner and the Deputy Commissioner, Services and Enforcement. The Whistleblower Office is committed to keeping stakeholders informed of our plans to improve the program, and to obtaining feedback on those plans.

**Communication and Outreach:** The IRS updated Publication 5251 (The Whistleblower Claim Process) in September 2022 and clarified information on the Whistleblower Program. In addition, the IRS published information on [irs.gov](https://www.irs.gov) to improve awareness of the program and to emphasize that information submitted needs to be specific, timely, credible, and must relate to alleged tax violations. We will continue to raise awareness of the program and to encourage claim submissions, especially for issues related to offshore accounts, cryptocurrency, high-end noncompliance by large corporations, complex pass-throughs, and high-net-worth individuals.

**Digitalization:** The Whistleblower Office is actively looking for opportunities to digitalize the whistleblower claim process including remote viewing of the administrative file and receiving whistleblower information.

**Paying Awards Sooner:** The Whistleblower Office worked to identify certain claims that might be able to be paid sooner if the specific circumstances allow it and resources are available. For example, certain claims may be able to be "disaggregated" from other related claims to make award payments earlier. In addition, we're making efforts to shorten the time frame for making the final determination of tax that is required before an award payment can be made.

**Administrative Claim File Review:** The Whistleblower Office is working to improve the Administrative Claim File Review process which allows whistleblowers to review the administrative file without having to litigate a claim in Tax Court. The Whistleblower Office is exploring opportunities to allow these reviews to take place in additional locations across the U.S. and is testing a new process that may allow whistleblowers to remotely view the digital administrative claim file on-line. We are working closely with IRS Counsel to ensure that redactions for that process are consistent with recent Tax Court decisions on that matter.



**Whistleblower Notices:** The Whistleblower Office is committed to keeping whistleblowers informed of the status of their claim submissions. Provisions in TFA 2019 provided the authority to disclose certain taxpayer-related information to whistleblowers so they can be better informed of the status of their claim. Since the implementation of these requirements to provide notices to whistleblowers, the Whistleblower Office has continued to improve the processes for this work, and we'll seek opportunities to continue such improvements.

## ISSUES OF INTEREST

### ► Rules on Access to and Disclosure of Taxpayer Information Could Provide Stronger Protection for Taxpayers

Since FY 2010, the Whistleblower Office's Annual Reports have noted concerns regarding the disclosure of taxpayer information to whistleblowers. The changes to IRC Section 6103(k)(13) enacted as part of TFA 2019, summarized in Table 4 below, provided some helpful clarification regarding the government's authority to disclose taxpayer information to whistleblowers. However, these changes did not address the challenging issues that continue to burden the Whistleblower Office and Chief Counsel litigators. In particular, existing statutes and case law provide too little clarity regarding the portion of a target taxpayer's administrative file that the IRS is authorized to disclose to a whistleblower. These challenges were recently exacerbated by the USTC opinion in the case *Whistleblower 972-17W v. Commissioner*, 159 T.C. No. 1 (2022), in which the USTC held that in certain whistleblower appeals, IRC Section 6103(h)(4)(A) allows the disclosure of a greater portion of the target taxpayer's returns and return information than the IRS had previously disclosed in these cases, including some returns and return information that may not be directly related to resolving an issue in the case.

At the heart of the IRS's concerns is the fact that whistleblowers face no consequences for the re-disclosure of information provided to them by the IRS during administrative or judicial proceedings. Specifically, IRC Section 6103(k)(13), enacted as part of TFA 2019, does not prohibit redisclosure of third-party return information disclosed by the Whistleblower Office during appointments to review the administrative claim file pursuant to Treas. Reg. Section 301.7623-3(c)(5), nor by the Office of Chief Counsel during USTC proceedings. The IRS makes, and will continue to make, many disclosures of taxpayer information in administrative and judicial proceedings pursuant to IRC Section 6103(h)(4). The IRS is often required by USTC discovery procedures to reveal extensive portions of the examination files of the third-party taxpayers that are the subjects of the whistleblower claims. Notably, these taxpayers are not parties to whistleblower litigation, and as such, they typically do not know that their confidential returns and return information may be disclosed to whistleblowers. When faced with overly broad discovery demands, Chief Counsel attorneys could formerly rely on IRC Section 6103(h)(4)(B) or (C) to limit disclosures to information "directly related" to an issue in the proceedings. However, the USTC opinion in *Whistleblower 972-17W* has eliminated this curb on disclosure for a large subset of whistleblower appeals.

The IRS's concerns about the lack of clear guidance as to what third-party information IRC Section 6103 is intended to shield from whistleblowers is particularly acute because, as noted above, the government has no authority under the IRC to restrain whistleblowers from re-disclosing these taxpayers' information. In USTC, the only limits to the re-disclosure of returns or return information by the whistleblower are those that a judge may choose to impose in a particular case. The USTC will typically issue a protective order at the request of the parties,



prohibiting the whistleblower from using third-party tax information provided by the IRS in another matter. However, such orders are not statutorily required, and the IRS and the Court may not always be cognizant of whistleblowers' violations of these orders. Moreover, the IRS is aware of cases in which whistleblowers have failed to comply with these protective orders. Enforcing the order requires Chief Counsel attorneys to spend additional time and effort on a case that would otherwise be closed.

In sum, the IRS has no legal authority to restrain whistleblowers from re-disclosing third-party taxpayer information disclosed during administrative and judicial processes, and continues to struggle when applying existing disclosure standards to determine what third-party return information should be disclosed.

### ► **Statutory Clarification Needed on Submitting Information and Claiming Awards**

IRC Section 7623 provides for awards, in some cases mandatory, when the IRS proceeds with an action based on a whistleblower's information. The mandatory award provisions require that a whistleblower's information be brought to the Secretary's attention and submitted under penalty of perjury. Additionally, the off-Code provisions in TRHCA 2006 establishing the Whistleblower Office require the Whistleblower Office to be responsible for initial processing of whistleblower information by providing that the Whistleblower Office "shall analyze the information received... and either investigate the matter itself or assign it to the appropriate Internal Revenue Service office." The Whistleblower Office understands the law to require a whistleblower to file a claim with the Whistleblower Office, bringing their information to the Secretary's attention before the IRS proceeds with an action based on the whistleblower's information.

While information comes into the IRS from a wide variety of sources, relatively few individuals that provide information to the IRS do so with the intent to claim an award. The claim for award is the only trigger available to the IRS for classifying an individual as a whistleblower for purposes of IRC Section 7623. The claim for award also allows the Whistleblower Office to contemporaneously track the IRS's use of whistleblower information, and proactively manage the Whistleblower Program. The Tax Court has held that a whistleblower can qualify for an IRC Section 7623(b) award by providing information to an IRS operating division or other Federal agency before filing a claim with the Whistleblower Office. See *Whistleblower 21276-13W v. Commissioner*, 144 T.C. 290, 300 (2015). Whistleblowers may understand this limited holding to provide for an open-ended period to file a claim with the Whistleblower Office based on information provided to the IRS.

IRC Section 7623(b)(3) currently refers to a "claim for award" without providing any further specifics. Clarifying the statutory claim filing requirement by linking it to a whistleblower's information submission would strengthen the Whistleblower Program by ensuring that Whistleblower Office resources are devoted to processing whistleblower information and maintaining a contemporaneous record of the IRS's use of whistleblower information. This would also ensure whistleblowers are properly classified as such and immediately receive all the whistleblower rights and protections afforded by the law when they submit information.

## ► **Allowing Information Sharing Within Government Could Enhance IRS Ability to Use Information and Pay Awards**

The Whistleblower Office is required to determine awards when the Secretary proceeds with an action based on a whistleblower's information and collects proceeds. IRC Section 7623(c) defines "proceeds" to include amounts collected outside of Title 26, meaning that other agencies or government entities may be a source of proceeds. The Whistleblower Office has no express investigatory ability to acquire information from these other agencies or government entities, despite their potential involvement in an action for which an award is payable. Statutory provisions giving the Whistleblower Office investigatory authority would ensure the Whistleblower Office can appropriately determine mandatory awards on proceeds under IRC Section 7623(c).

Separately, the Whistleblower Office faces limitations on the information it can share with other agencies and government entities. This includes the Department of Labor, acting in its anti-retaliation enforcement role under IRC Section 7623(d), and other government agencies applying separate, but at times interrelated, whistleblower provisions. Provisions that would allow information sharing within the federal government for purposes of applying the whistleblower provisions would enhance the IRS's ability to use information and pay awards under IRC Section 7623.

## ► **Significant Administrative Resources Must Be Allocated To Claims Involving Information Not Used By The IRS**

The Whistleblower Office and IRS use significant resources to address repeat claim filings from the same individuals, who continue to submit information to the IRS after being informed that the agency is not interested in pursuing their information. The administrative burdens of these claims far outweigh any benefit of the information to the IRS.

The Whistleblower Office must expend resources responding to these claimants (often repeatedly), maintaining records, and engaging in litigation to defend an administrative, enforcement decision not to pursue the information provided. The USTC's review of any dispositive communication issued by the Whistleblower Office compounds the administrative burden of these claims on the agency.

# WHISTLEBLOWER PROGRAM RESULTS

Under IRC Section 6103, returns and return information are confidential, unless an exception applies. There is no exception in IRC Section 6103 that permits the publication of data on identifiable, individual whistleblowers. The IRS may, however, disclose information in aggregate form when the data cannot be associated with, or otherwise identify a taxpayer (or whistleblower). In compliance with these disclosure rules, summary data on awards paid, receipts, closures, and claim status appear in this report.

## AWARDS PAID, FY 2022

**TABLE 1: AMOUNTS COLLECTED AND AWARDS UNDER IRC SECTION 7623, FISCAL YEAR 2022**

	IRC Section 7623(a)	IRC Section 7623(b)	TOTAL
Claims Related to Awards	215	181	396
Number of Awards	106	26	132
Dollar Amount of Awards Paid	\$3,317,728	\$34,433,050	\$37,750,778
Proceeds Collected for Awards Paid	\$19,994,543	\$152,711,393	\$172,705,936
Awards as a Percentage of Proceeds Collected	16.6%	22.5%	21.9%

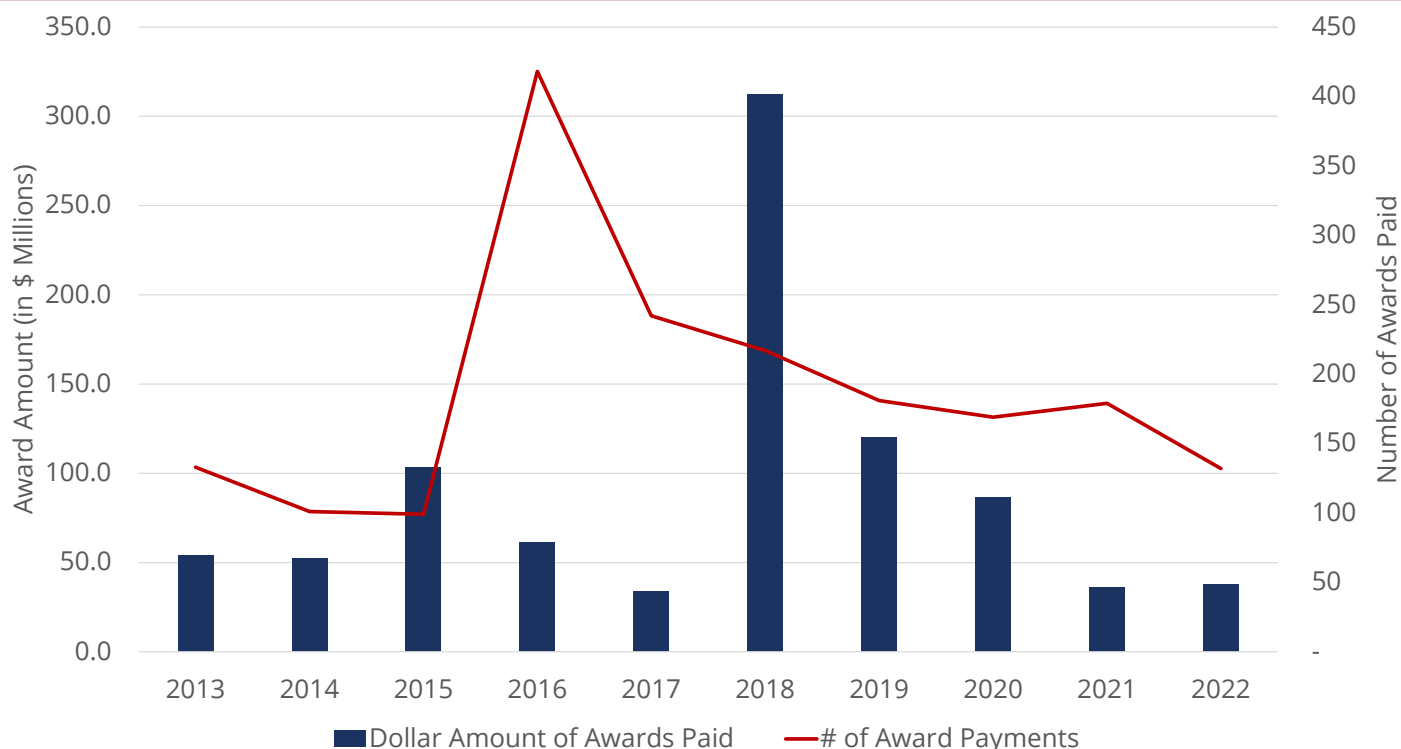
**NOTE:** Data reported as of September 30, 2022

**Table 1** provides information on awards paid and collections attributable to whistleblower information, prior to the sequestration reduction described below. In FY 2022, there was an additional \$9.8 million of uncollected assessments related to these awards<sup>4</sup>. In FY 2022, while only 19.7% of the number of award payments made involved IRC Section 7623(b) claims, the IRC Section 7623(b) comprised over 91.2% of the award amount paid.

Pursuant to the requirements of the Budget Control Act of 2011, as amended by the American Tax Relief Act of 2012, whistleblower award payments under IRC Section 7623 are subject to sequestration. The applicable sequestration reduction may change from year-to-year. As applied to payments under IRC Section 7623, the required reductions in FY 2022 were 5.7% of the amount that would otherwise have been payable. Sequestration reductions totaling \$2,151,794 were applied to awards paid during FY 2022.

<sup>4</sup> The statute of limitations for collection has expired, no future collection of the proceeds is possible. Because these proceeds were not collected, these amounts were not included in the award determinations or the figures above.

**FIGURE 3: TEN-YEAR AWARD COMPARISON**



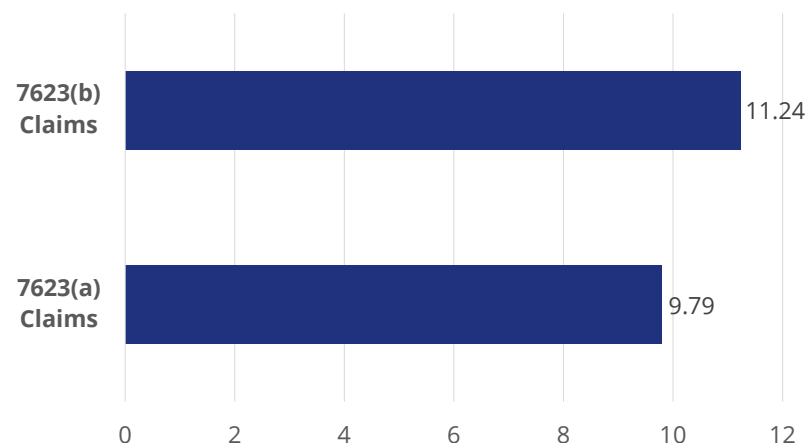
**Figure 3** provides a ten-year lookback on the number of awards paid in each fiscal year and the dollar amount (in millions) for each of the respective years. The figure also illustrates that the number of awards paid doesn't necessarily correlate with the dollar amount of the awards paid in the year. In FY 2016, the Whistleblower Office paid 418 awards totaling \$61.4 million. In FY 2018, the Whistleblower Office paid 217 awards totaling \$312.2 million. The number and amounts of awards paid each year can vary significantly, especially when a small number of high-dollar claims are resolved in a single year.

The year in which an award is paid is generally not the year in which collections occurred because the IRS must wait until there is a final determination of proceeds, which means that the taxpayer has exhausted all appeal rights and the taxpayer no longer can file a claim for refund or otherwise seek to recover the proceeds from the government.

## IRC SECTION 7623 PAYMENT & CLAIM PROCESSING ANALYSIS, FY 2022

The Whistleblower Office strives to issue award payments as promptly as circumstances permit. Treasury Regulation Section 301.7623-4, which governs payment of whistleblower awards, does not permit issuing the payment until there has been a final determination of tax with respect to the actions, the Whistleblower Office has determined the award, and either all appeals of the Whistleblower Office's determination are final or the whistleblower signed the waiver agreeing to the determination. The Whistleblower Office measures timeliness of the payments based on how many days it takes to issue payment once these requirements are met. In FY 2022, the IRC Section 7623(b) awards were issued, on average, 68 days of the date when all regulatory requirements were met.

**FIGURE 4: AVERAGE YEARS FROM CLAIM RECEIPT TO AWARD PAYMENT BY CLAIM TYPE, FISCAL YEAR 2022**



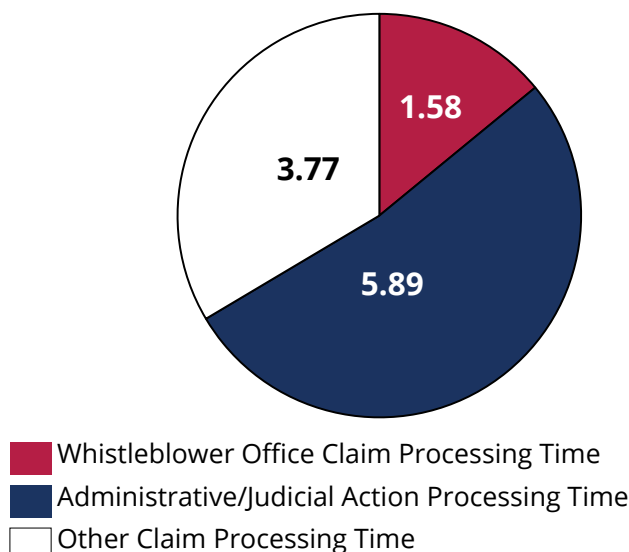
**Figure 4** provides the average years from claim receipt to award payment for IRC Section 7623(a) and IRC Section 7623(b) awards paid in FY 2022.

Average claim processing time for IRC Section 7623(b) award payments made during FY 2022 increased by 1.3% from the prior year and average claim processing time for IRC Section 7623(a) award payments increased by 14.9%. Claim processing time is measured by comparing the date the Form 211 is received (start date) and the date the award is paid (end date). There is a high likelihood that the average claim processing times will continue to increase as claim inventory continues to age while the Whistleblower Office awaits audits, exams, investigations, appeals, tech services, collection, statutes to expire, and whistleblower litigation.

**Figure 5** provides additional analysis of average award claim processing times for IRC Section 7623(b) awards paid in FY 2022. The average award claim processing time is broken into three categories: Whistleblower Office Claim Processing Time, Administrative/Judicial Action Processing Time, and Other Claim Processing Time.

Whistleblower Office Processing Time includes evaluating how the whistleblower's information contributed to the administrative and judicial actions, determining proceeds, calculating the award, the administrative proceeding for the award, and making the award determination. The Administrative/Judicial Action Processing time includes examination/investigation time and target taxpayer appeals and litigation time. The Other Claim Processing Time includes the collection time, time spent waiting for the refund statute to expire, and whistleblower litigation of the award determination.

**FIGURE 5: IRC SECTION 7623(B) AVERAGE AWARD CLAIM PROCESSING TIME (IN YEARS) BY PROCESS**



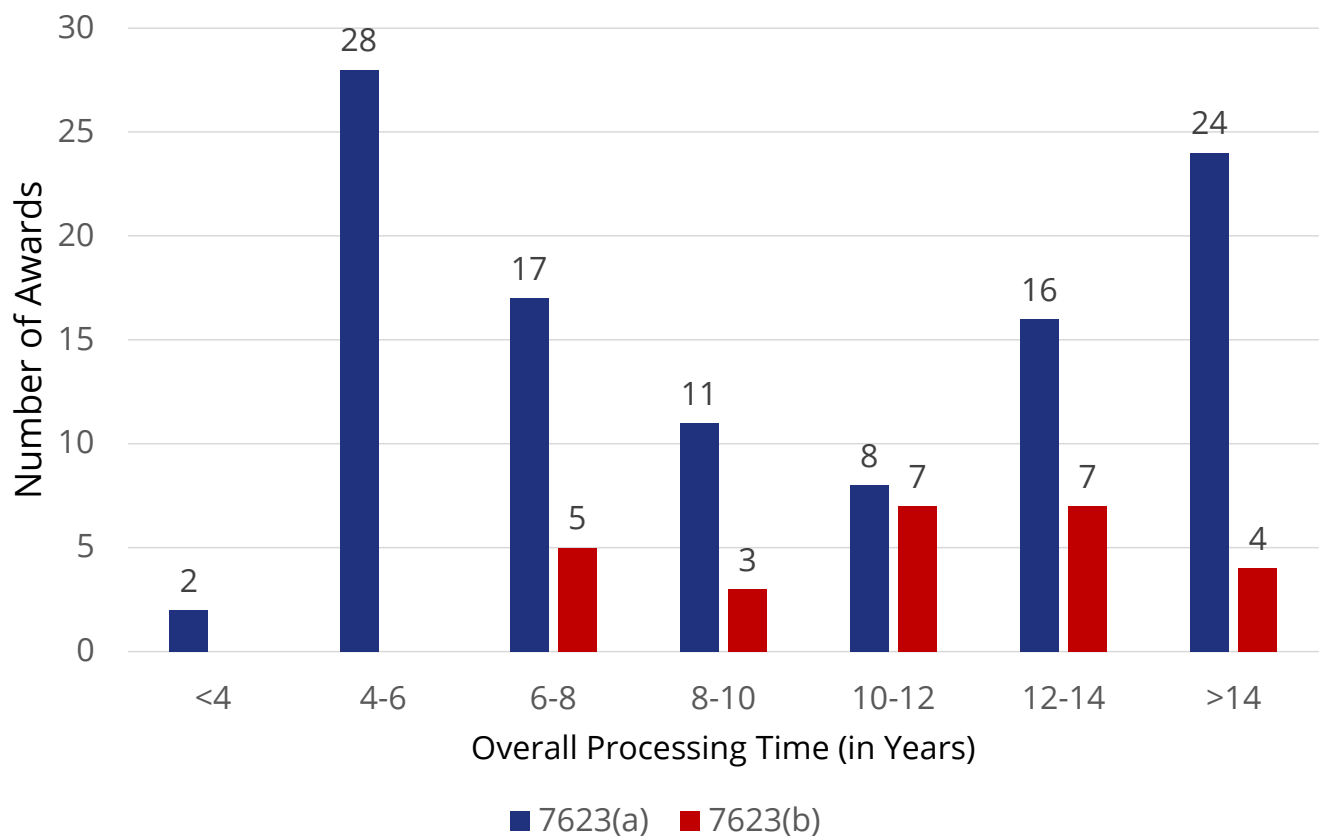
**TABLE 2: FIVE PROCESSES WITH THE GREATEST IMPACT ON THE AWARD CLAIM PROCESSING TIME FOR IRC SECTION 7623(B) AWARDS PAID IN FY 2022**

Claim Process	Length of Time (in Years)	
	Shortest	Longest
OD Field (Examination/Investigation)	0.50	8.53
Collection of Proceeds	0.19	10.98
Related Claims in Progress	0.67	6.42
Taxpayer Appeals/Litigation	0.36	2.92
Waiting for Expiration of Refund Statute	0.01	2.93

**Table 2** Identifies the largest factors for the award claim processing time for IRC Section 7623(b) awards paid in FY 2022. While these factors were the largest factors for the overall population of IRC Section 7623(b) awards paid in FY 2022, these aren't necessarily the largest factors for each individual claim.

**Figure 6** provides a further breakdown of the overall processing time (in years) from claim receipt to award payment for each IRC Section 7623(a) and IRC Section 7623(b) award paid in FY 2022.

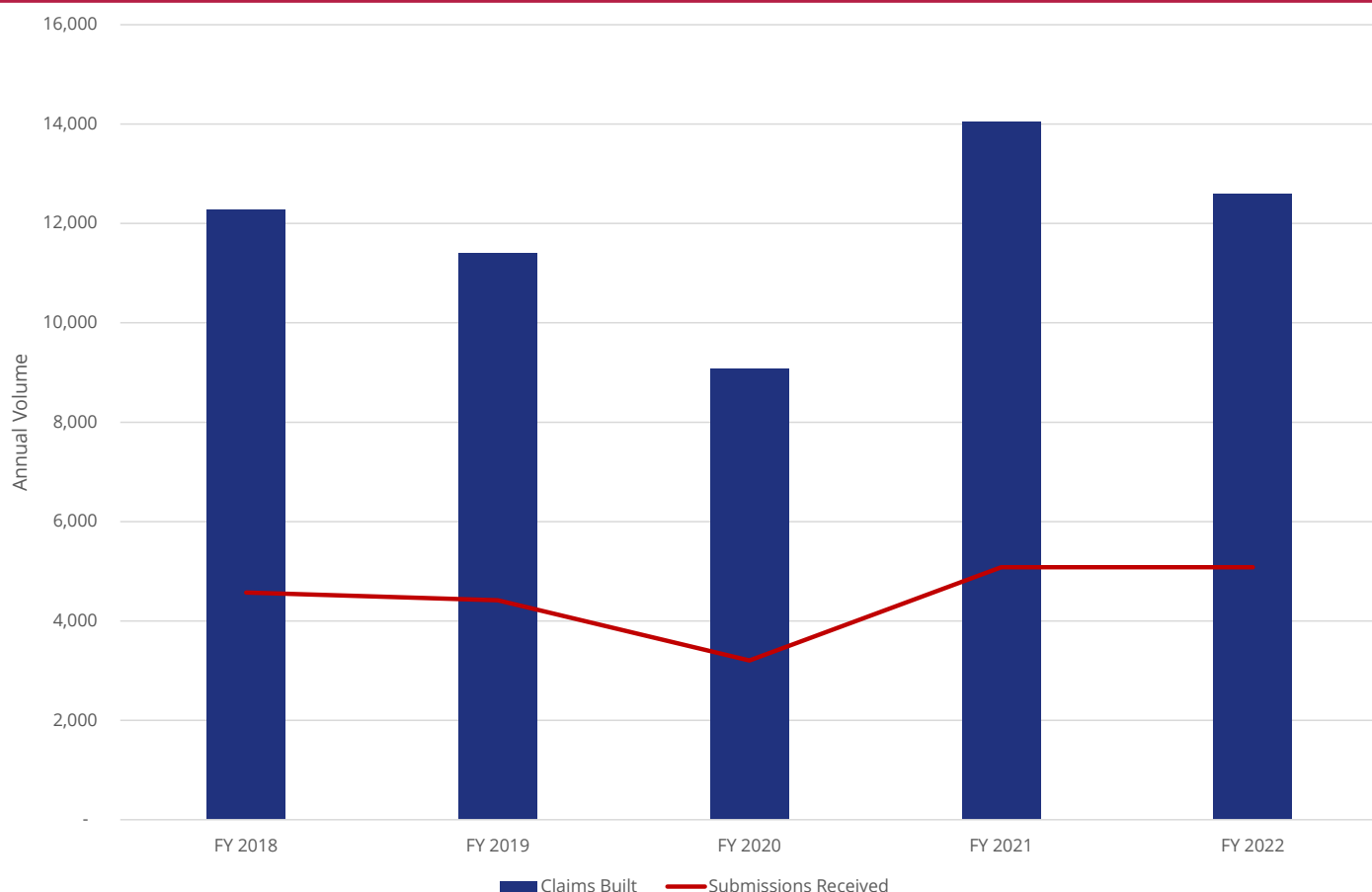
**FIGURE 6: CLAIM PROCESSING BREAKDOWN FROM CLAIM RECEIPT TO AWARD PAYMENT BY CLAIM TYPE, FY 2022**



# CLAIM RECEIPT AND PROCESSING IN FY 2022

In FY 2022, the Whistleblower Office built 12,597 Claims from 5,084 submissions. On average, the submissions were processed within 21.3 days of the date the Whistleblower Office received the submission.

**FIGURE 7: 5-YEAR COMPARISON OF CLAIMS BUILT AND SUBMISSIONS RECEIVED**



**Figure 7** provides a comparison of claims built and submissions received from FY 2018 through 2022. The actual number of Forms 211 received may be higher than the number of submissions received. Generally, the Whistleblower Office assigns each taxpayer related to the whistleblower's claim a claim number.

A whistleblower's submission may contain a single Form 211 identifying a single taxpayer (which would be counted as one submission and one claim built), a single Form 211 identifying multiple taxpayers (which would be counted as one submission and multiple claims built – one per taxpayer), or multiple Forms 211 identifying multiple taxpayers (which would be counted as one submission and multiple claims built – one per taxpayer).

The submissions received and claims built in FY 2022 are in line with the submissions received and claims built over the prior 5-years.



# TEN MOST COMMON ALLEGATIONS SUBMITTED IN FY 2022

**Table 3** displays the ten most common allegations submitted on Form 211 for FY 2022.

**TABLE 3: TEN MOST COMMON ALLEGATIONS SUBMITTED IN FY 2022**

Ranking	Allegation
1	Unreported/Under Reported Income
2	Failure to File Tax or Information Return
3	Wage Under Reporter
4	General Allegations of Fraud, Tax Fraud, Wire Fraud, Insurance Fraud, etc.
5	Overstated/False Deductions
6	False Dependent Exemptions
7	Employee vs. Subcontractor
8	Rental Income
9	Capital Gains Tax
10	International/Offshore Issues

**NOTE:** Data reported as of September 30, 2022

## AUTHORIZED DISCLOSURES MADE UNDER IRC SECTION 6103(K)(13) IN FY 2022

**Table 4** explains the three types of authorized disclosures the Whistleblower Office made under IRC Section 6103(k)(13) which was enacted as part of the TFA 2019 of 2019 on July 1, 2019. The Whistleblower Office's disclosure responsibilities are as follows:

- Referred for an Audit or Exam Notice – A notice to the whistleblower if the information they provided has been referred for an audit or examination,
- Payment of Tax Notice – A notice to the whistleblower if a payment of tax is received for a tax liability related to information provided by the whistleblower, and
- Status and Stage Notice – A notice to the whistleblower on the status and stage of any action related to the information provided by the whistleblower.

The Referred for an Audit or Exam notice is mailed by the Whistleblower Office when an OD notifies the Whistleblower Office a Form 211 is being sent out to the field for an examination. The Payment of Tax notice is sent by the Whistleblower Office after it determines a payment of tax has been received on an assessment related to information provided by the whistleblower. Subject to the requirements and conditions prescribed by the Secretary, the Status and Stage notice is sent out as a response to a whistleblower's written request for status and stage information. All notices are provided to the whistleblower. If the whistleblower has a Power of Attorney (POA), then a copy of the notice may be provided to the POA.

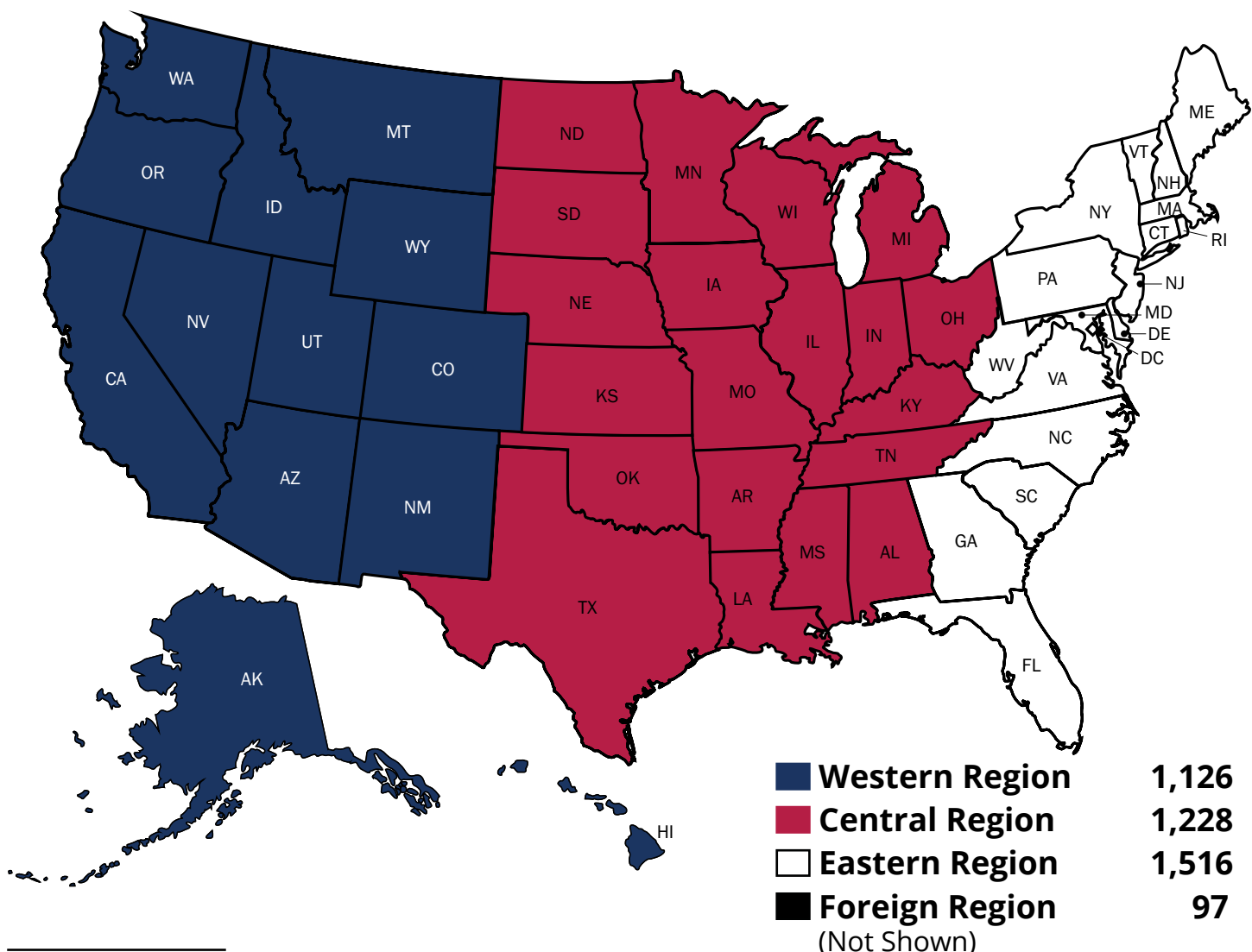


**TABLE 4: DISCLOSURES MADE UNDER IRC 6103(K)(13) IN FY 2022**

Disclosure Purpose	Number of Disclosures
Referred for an Audit or Exam Notice	1,201
Payment of Tax Notice	1,890
Status and Stage Notice	1,024
<b>Totals</b>	<b>4,115</b>

**NOTE:** Data reported as of September 30, 2022

**Figure 8** shows the geographic location of all whistleblowers by region for claims filed in FY 2022. The regions consist of the Western, Central, Eastern, and Foreign geographic locations. The data counts a distinct whistleblower only one time, regardless of whether the whistleblower submitted numerous claims throughout the fiscal year or filed a claim in conjunction with other whistleblowers.

**FIGURE 8: NUMBER OF WHISTLEBLOWERS BY GEOGRAPHIC REGION<sup>5</sup>**

<sup>5</sup> The U.S. Virgin Islands and Puerto Rico are included in the Eastern Region. Guam is included in the Western Region.

# OPEN IRC SECTION 7623(A) AND 7623(B) CLAIMS

**Table 5** reflects a count of the open IRC Section 7623(a) and Section 7623(b) claims in the various processing phases as of September 30, 2022.

**TABLE 5: STATUS OF OPEN IRC SECTION 7623(A) & SECTION 7623(B) CLAIMS**

Processing Phase	IRC Section 7623(a)	IRC Section 7623(b)	Total Claims
Intake/Classification	1,131	269	<b>1,400</b>
OD Field <sup>6</sup>	2,601	2,794	<b>5,395</b>
OD Field Suspense <sup>7</sup>	6,406	6,123	<b>12,529</b>
Taxpayer Appeals/Litigation	190	365	<b>555</b>
Collection Suspense <sup>8</sup>	2,908	1,273	<b>4,181</b>
Preliminary Award Evaluation	584	327	<b>911</b>
Interim Award Assessment	705	378	<b>1,083</b>
Award Suspense	459	722	<b>1,181</b>
Final Review	5	723	<b>728</b>
Whistleblower Litigation <sup>9</sup>	32	32	<b>64</b>
<b>Total</b>	<b>15,021</b>	<b>13,006</b>	<b>28,027</b>

**NOTE:** Data reported as of September 30, 2022

- 6 The Whistleblower Office is aware of claims in this status with adjustments attributable to the whistleblower and proceeds collected of several hundred million dollars. The Whistleblower Office is working closely with the operating divisions on these claims to monitor when the administrative and judicial actions will be finalized. These proceeds are not counted or reported until their respective awards are paid.
- 7 Some claims in this status have already completed their administrative and judicial actions and are fully paid. The Whistleblower Office is reviewing these claims to determine whether the claim(s) can be disaggregated for earlier payment. As of September 30, 2022, the claims in this status had several hundred million dollars in proceeds collected. These proceeds are not counted or reported until their respective awards are paid.
- 8 As of September 30, 2022, the Whistleblower Office is monitoring for collection of several billion dollars in assessed amounts related to whistleblower information.
- 9 There are closed claims that are in Litigation. Table 5 only identifies open claims.

# DESCRIPTION OF PROCESSING PHASES

## ► **Intake/Classification**

Includes claims assigned to the ICE Team and the operating division (OD) classification functions. The primary function of this process is to evaluate the whistleblower's allegations to determine whether the Form 211 is complete, related to an existing claim, build the claim, assign the claim to the OD classification function, and evaluation by the OD to decide whether the information should be forwarded to the OD subject matter expert and administrative action function.

## ► **OD Field**

Includes claims assigned to the OD subject matter experts and administrative action functions (such as examination or investigation).

## ► **OD Field/Suspense**

Includes claims waiting for the administrative or judicial action of a related claim to close. Claims submitted often include multiple taxpayers, potential related taxpayers, or are expanded to include additional taxpayers not identified by the whistleblower. All claims in this status are awaiting the outcome of related claims which are in another processing phase.

## ► **Taxpayer Appeals/Litigation**

This process involves the status on claims in which the taxpayer has sought review by the IRS appeals function or the courts.

## ► **Collection Suspense**

These are claims with finalized assessments being monitored for collection of the proceeds. Claims are monitored on a monthly basis to determine whether payments of tax are made.

## ► **Preliminary Award Evaluation**

Includes claims undergoing consideration of whether/how the whistleblower contributed to the action, calculating the recommended award percentage, preliminary award recommendation, and claims undergoing an administrative proceeding for an award determination (including rejections and denials).

## ► **Interim Award Assessment**

Includes claims that are past the Preliminary Award Evaluation phase and the final determination is in process or issued. Includes all award determinations including rejections and denials.

## ► **Award Suspense**

Includes claims waiting for the final determination of tax, guidance, and determination of final proceeds.

## ► **Final Review**

Includes all award determinations, including rejections and denials, elevated to management for review and approval.

## ► **Whistleblower Litigation**

Includes claims where the whistleblower has sought litigation regarding an award determination made on their claim. The awards for these claims cannot be paid until the appeals of the Whistleblower Office's determination are final.

# CLOSURE REASONS FOR FISCAL YEAR 2022

**Table 6** provides a summary of the claim closures by closure reason for FY 2022. The data was grouped into similar categories and is displayed as a percentage of the total closures. In FY 2022, the Whistleblower Office closed 11,605 claims, a 7.8% decrease from FY 2021 closures.

**TABLE 6: FY 2022 CLOSURE REASONS, ALL CLOSURES FROM ANY YEAR OF RECEIPT**

Closure Reasons <sup>10</sup>	Total Closures	% of Total Closures
Claim Denied - No Actionable Issue	8,193	71%
Claim Denied - Issues Below Threshold for IRS Action	1,415	12%
Claim Denied – Short or Expired Assessment Statute of Limitations	640	6%
Claims Paid in Full	396	3%
Claim Rejected - Failure to Sign Form 211 Under Penalties of Perjury or Incomplete Form 211	251	2%
Claim Denied - Examination Resulted in "No Change" or Whistleblower Issues resulted in "No Change"	194	2%
Claim Denied - Surveyed by Operating Division	172	1%
Anonymous Referred to Form 3949-A Program	138	1%
Closed - Failure to File Form 211	60	Less than 1%
Administrative Error	35	Less than 1%
Claim Denied - No Collected Proceeds (Uncollectible)	30	Less than 1%
Closed - Unable to Contact Whistleblower	23	Less than 1%
Claim Denied - Information Already Known	21	Less than 1%
Deceased Whistleblower Claims	14	Less than 1%
Closed – Other	12	Less than 1%
Claim Rejected - Ineligible Whistleblower	10	Less than 1%
Closed - Non-Compliant Whistleblower	1	Less than 1%
<b>Total Closures</b>	<b>11,605</b>	<b>100%</b>

**NOTE:** Data reported as of September 30, 2022

<sup>10</sup> The administrative closures, defined in the "Description of Closure Reasons" had an additional \$1.3 million in proceeds collected. These proceeds collected will not be reported until the respective awards are paid.

# DESCRIPTION OF CLOSURE REASONS

## ► **Claim Denied - No Actionable Issue:**

Claims assigned to and reviewed by the operating division classification functions. The operating division concluded information provided by the whistleblower was not actionable.

## ► **Claim Denied – Issues Below Threshold for IRS Action**

Claims assigned to and reviewed by the operating division classification functions. The whistleblower's information contained valid and legitimate issues but, due to limited resources, the IRS was unable to justify an action for the assessment potential of the issues.

## ► **Claim Denied – Short or Expired Assessment Statute of Limitations**

Claims assigned to and reviewed by the operating division classification functions. The whistleblower's information contained valid and legitimate issues but the statute of limitations for making an assessment was either too short or expired at the time the information was reviewed by the operating division and the IRS was unable to take action on the information.

## ► **Claims Paid in Full**

Claims included in the award determinations for the awards paid in FY 2022.

## ► **Claim Rejected - Failure to Sign Form 211 Under Penalties of Perjury or Incomplete Form 211**

Claims not signed under penalties of perjury, as required by IRC Section 7623(b)(6)(C) or didn't include sufficient information as outlined in Treasury Regulation 301.7623-1(c)(2) for the IRS to consider the claim.

## ► **Claim Denied - Examination Resulted in "No Change" or Whistleblower Issues resulted in "No Change"**

Claims where the IRS took action on the whistleblower's information and either the entire action resulted in no change or action resulted in changes but not on the issues raised by the whistleblower.

## ► **Claim Denied - Surveyed by Operating Division**

Claims that the operating division referred for an administrative action, but the field had insufficient resources to take action on the information.

## ► **Anonymous Referred to Form 3949-A Program**

Claims filed anonymously. The Whistleblower Office was unable to process the whistleblower's information because it didn't identify a whistleblower. The information was sent as an information referral to the function that processes the Form 3949-A, Information Referral.

## ► **Closed - Failure to File Form 211**

Claims where an individual submits information with allegations of non-compliance with laws which the IRS is authorized to administer, enforce, or investigate but did not do so on a Form 211. The Whistleblower Office corresponded with the individual to request a Form 211 so the information can be considered a claim for an award, but a Form 211 was not received.

## ► **Administrative Error**

This is used when the Whistleblower Office inadvertently creates a duplicate record for an existing claim. All information is merged and recorded under the original claim number.

► **Claim Denied - No Collected Proceeds (Uncollectible)**

Claims where the service completed the administrative and judicial actions and the actions resulted in adjustments attributable to the whistleblower, but no proceeds were collected and statute of limitations for collecting the proceeds has expired.

► **Closed - Unable to Contact Whistleblower**

Claims that were ready for an award determination/payment, but the Whistleblower Office was unable to contact the whistleblower after repeated attempts and the correspondence is being returned undeliverable. This is an administrative closure. These claims will be reopened and processed if/when the whistleblower contacts the Whistleblower Office.

► **Claim Denied - Information Already Known**

Claims where the operating division referred the whistleblower's information to a field group that currently had the target taxpayer under an open audit or investigation, but the field group was already aware of the issue/information raised by the whistleblower information.

► **Deceased Whistleblower Claims**

Claims ready for an award determination/payment, but the whistleblower was deceased, and the Whistleblower Office was unable to identify a point of contact for the estate in order to make the award determination/pay the award. This is an administrative closure. These claims will be reopened and processed if/when the Whistleblower Office is able to identify a point of contact for the estate. The Whistleblower Office is currently working with other functions in the IRS that specialize in processing/examining estate returns to get assistance with identifying the point of contact for the whistleblowers' estate.

► **Closed - Other**

Claims that did not fall within one of the other specific closure reasons.

► **Claim Rejected - Ineligible Whistleblower**

Claims filed by individuals who are ineligible (under Treasury Regulation 301.7623-1(b)(2)) to file a claim for an award under IRC Section 7623.

► **Closed - Non-Compliant Whistleblower**

Claims that were ready for an award determination/payment, but the whistleblower has not filed their tax return and the whistleblower has not responded to the Whistleblower Office. This is an administrative closure. These claims will be reopened and processed if/when the whistleblower contacts the Whistleblower Office and either files their tax return or provides support for not having a filing requirement.

