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United States Senate

CHARLES E. GRASSLEY

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April 30, 2012

REPLY TO:

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The Honorable Timothy F. Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

The Honorable Douglas L. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

Dear Secretary Geithner and Commissioner Shulman:

It has been seven months since I last wrote to Commissioner Shulman regarding the implementation of the whistleblower program at the Internal Revenue Service (IRS). While I was encouraged by the IRS's plodding but steady progress, I am now writing to convey my extreme disappointment in the management of the program. It was brought to my attention that the Director of the IRS Whistleblower program is currently participating in the Offshore Alert Conference (Conference) at the Ritz-Carlton in Miami Beach.

It is not clear to me how his attendance at the Conference furthers the administration of the IRS whistleblower program. The panel in which he is participating is titled "Enticing the Top Echelon: How the IRS, SEC and CFTC Attract High-Level Whistleblowers". Yet, the conference itself does not seem to attract whistleblowers. Under the "Who Attends" section of the conference's website, the following are listed: Global Financial Experts and Leading Offshore Firms and under "Who Should Attend" the following are listed: Offshore Providers, Offshore Clients, and Investigators".

The Whistleblower Director is not an investigator. In fact, IRS Deputy Commissioner Miller, in his response to a question about the Director's ability to pursue investigations in my September 13, 2011, letter to Commissioner Shulman, states the following: "At this time, the Whistleblower Office does not use this authority as the basis for independently conducting audits and investigations of taxpayers. This decision is based on our evaluation of a number of factors and is driven by efficiency, consistency and quality concerns discussed below". Both my letter to Commissioner Shulman and Deputy Commissioner Miller's response are attached.

Separately, the Conference agenda lists at least two other IRS employees as "featured speakers", one a special advisor to the Offshore Compliance Initiative (OCI) and another who is a Special Trial Attorney to the OCI. The IRS's Offshore Voluntary Disclosure Initiative (OVDI) and its corresponding successes with combating offshore tax evasion are the result of whistleblowers coming forward following the improved IRS whistleblower incentives I authored

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JUDICIARY

Committee Assignments:

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in 2006. Assuming that these two individuals are involved with the OVDI program, I would expect that they could speak on behalf of the IRS Whistleblower Office.

However, I am skeptical that it is even appropriate for these two individuals to attend. **There is certainly no reason for nineteen IRS employees to attend the conference** as was reported to me just this morning. Again, the target audience for the conference is not whistleblowers, and, in a challenging fiscal time, this is not the best use of IRS resources. **As a result, I ask that you provide the following information.**

- Provide a detailed list, by position title, of each IRS and IRS Chief Counsel employee that attended the Conference.
- For each, explain who authorized attendance for this travel and what the justification was for their attendance.
- Provide an itemized list of expenses for each employee that separately lists the following costs: conference fees, travel, accommodations, per diem expenses, and any other expenses.

Moreover, as I indicated in my September, 2011, letter, data from the IRS's own annual whistleblower report to Congress, as well as reports from the Government Accountability Office (GAO), make clear that the IRS does not have a problem attracting whistleblowers. The IRS's current problem is processing and compensating whistleblowers in a timely manner.

Since last writing to Commissioner Shulman, I have received even more correspondence from whistleblowers whose claims are not progressing at the IRS. Such correspondence, along with recent cases filed in the Tax Court and corresponding press coverage, indicate that my worst fears are coming true. The lack of progress is demoralizing whistleblowers so that I am now concerned that whistleblowers will stop coming forward. In my September, 2011, letter, I asked for monthly updates about the number of claims sitting in the Whistleblower Office for review. **The IRS has completely ignored this request and I now ask that you provide an update immediately.**

It is my understanding that the Whistleblower Office is now the source of significant delays in issuing awards. The IRS Whistleblower Director is supposed to be an advocate for whistleblowers – not those who are promoting offshore tax evasion. The Whistleblower Director's time would be better served by shepherding existing claims through the IRS bureaucracy. As a result, **I request a detailed list of the Whistleblower Director's travel for the past three years, including justifications and expense summaries. Also, I request that the Whistleblower Director's travel be curtailed immediately, with Commissioner Shulman personally approving travel, if appropriate.**

Similarly, I remain concerned that IRS Senior Management, through creation of the Whistleblower Executive Board in July, 2008, may also now be a significant source of delay. I first inquired about this board in my letter to Secretary Geithner dated June 21, 2010. Again, Deputy Commissioner Miller responded on behalf of the Secretary and this was his response:

“The Whistleblower Executive Board was created in July 2008 and meets periodically to address matters pertinent to administration of the Whistleblower Program within the IRS. The Board has not yet reviewed an award claim recommendation or determination.”

The IRS Internal Revenue Manual (IRM), section 25.2.2.8.2 states the following: “Prior to communicating the preliminary recommendation to the Whistleblower, the Director will share the preliminary recommendation with the Whistleblower Executive Board for concurrence.” However, it is not clear how often this board meets. **Provide a detailed list of all such meetings for the past three years and indicate when the next one will occur.**

In my September, 2011, letter to Commissioner Shulman, I requested that the IRS implement the GAO’s recommendations as well as a few others before the IRS submitted its next whistleblower report to Congress. The IRS response to the GAO indicated that IRS did not have the resources to implement those recommendations. As I stated in my letter, the money recovered from whistleblowers should more than cover the costs of implementing those recommendations.

In addition, Deputy Commissioner Miller repeatedly stated in his response that there was not enough time to implement those recommendations before that report was issued. I note that seven months after the end of the fiscal year, the IRS still has not provided the fiscal year 2011 whistleblower report to Congress. Given the delay in issuing this report, I expect that the recommendations have been adopted. As I stated in my last letter, there is no reason why this report should not be provided to Congress by November 30th each year. If the Whistleblower Office is doing its job of tracking claims, it should not take more than 60 days to prepare the report.

With respect to another area of concern, the two year refund statute of limitations, the Deputy Commissioner responded that there are cases “in which awards can be paid before the running of the two year refund statute. The Whistleblower Office practice is to look at the two year refund statute on a case by case basis and to move forward with payment when the facts of the particular case warrant against doing so”. **Please provide the number of claims for which the Whistleblower Office has proceeded before the two year statute of limitations has expired.**

In addition, it has come to my attention that the Whistleblower Office does not even begin to consider whether a whistleblower can receive an award before the taxpayer has exhausted all appeal rights. Given the procedure outlined in the IRM, including the requirement of review by the Executive Board, this seems like another way to delay issuing awards to whistleblowers. **Please explain this policy and the amount of time it takes the Whistleblower Office to calculate and recommend an award.**

Another issue I raised in my September, 2011, letter was how the IRS was educating employees about the whistleblower program. Deputy Commissioner Miller responded:

“In the future, the IRS plans to communicate with employees highlighting some of the successes of the Whistleblower Program and encouraging the use of whistleblower

information in audits and investigations. The Whistleblower Office will re-double its internal communication efforts, reaching out through our communications and training channels to these employees.”

Unfortunately, this response appears to be just lip service. The IRS’s January 9, 2012, press release and subsequent speeches by IRS officials, including Commissioner Shulman himself at the National Press Club earlier this month, fail to recognize the role of whistleblowers in the OVDI program. **Please provide a list of all internal communication efforts in which IRS employees, including IRS Chief Counsel employees, were educated and trained on the whistleblower program and its successes. In addition, I ask that you provide data regarding the IRS’s offshore compliance initiatives prior to the first OVDI program in 2009, including the number of taxpayers and dollars collected.**

Finally, I would like an update on the regulations regarding the whistleblower awards for whistleblowers who may also be planners and initiators. Please include in your response a list of meetings IRS officials have had with officials at the Department of Justice and the Securities and Exchange Commission. As I have said before, there is no reason for the IRS to recreate the wheel in this area. Five years after the 2006 improvements were enacted, it is irresponsible that the Treasury Department and IRS have not issued final regulations for this program.

On a similar note, the regulations regarding the definition of “collected proceeds” are incomplete. As my staff indicated to the Treasury Department staff, the regulations do not address how a whistleblower’s claims are protected and advanced in the future when the disallowance of a net operating loss, for example, reduces a future refund claim. Please explain how this issue will be addressed.

To date, the Deputy Commissioner has responded to my letters to each of you. Given my concerns that the IRS Whistleblower program does not have your support, I ask that any response to this letter be under your signatures. I appreciate your prompt response. If you have any questions, please do not hesitate to contact me or my staff.

Sincerely,


Charles E. Grassley
United States Senator

cc: The Honorable J. Russell George
The Honorable Gene L. Dodaro