

REPORT NO. 575
DECEMBER 19, 2022

OFFICE OF
**INSPECTOR
GENERAL**

OFFICE OF AUDITS

**SEC's Whistleblower Program:
Additional Actions Are Needed To Better
Prepare for Future Program Growth,
Increase Efficiencies, and Enhance
Program Management**



OFFICE OF
INSPECTOR GENERAL

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

M E M O R A N D U M

December 19, 2022

TO: Gurbir S. Grewal, Director, Division of Enforcement

FROM: Helen M. Albert, Acting Inspector General *Helen M. Albert*

SUBJECT: *SEC's Whistleblower Program: Additional Actions Are Needed To Better Prepare for Future Program Growth, Increase Efficiencies, and Enhance Program Management, Report No. 575*

Attached is the Office of Inspector General (OIG) final report detailing the results of our audit of the U.S. Securities and Exchange Commission's whistleblower program. The report contains eight recommendations that should help further increase efficiencies, better prepare for future whistleblower program growth, reduce risks, and improve controls over whistleblower program data and communication with external parties.

On November 18, 2022, we provided management with a draft of our report for review and comment. In its December 13, 2022, response, management concurred with our recommendations. We have included management's response as Appendix III in the final report.

Within the next 45 days, please provide the OIG with a written corrective action plan that addresses the recommendations. The corrective action plan should include information such as the responsible official/point of contact, timeframe for completing required actions, and milestones identifying how management will address the recommendations.

We appreciate the courtesies and cooperation extended to us during the audit. If you have questions, please contact me or Rebecca L. Sharek, Deputy Inspector General for Audits, Evaluations, and Special Projects.

Attachment

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EXECUTIVE SUMMARY

SEC's Whistleblower Program: Additional Actions Are Needed To Better Prepare for Future Program Growth, Increase Efficiencies, and Enhance Program Management

REPORT NO. 575 | DECEMBER 19, 2022

WHY WE DID THIS AUDIT

According to the U.S. Securities and Exchange Commission's (SEC, Commission, or agency) Office of the Whistleblower (OWB), assistance and information from a whistleblower who knows of possible securities law violations can be among the most powerful weapons in the law enforcement arsenal of the SEC. Since the inception of the SEC whistleblower program in 2011, the Commission has awarded more than \$1.3 billion to over 300 individuals. In fiscal year 2021, the SEC awarded more than it ever had (about \$564 million) to the largest number of whistleblowers (108) in a single year.

We conducted this audit to assess the growth of the SEC's whistleblower program and the functioning of key program controls. The engagement scope period was from fiscal years 2017 to 2021 and included whistleblower hotline calls, award claims, and awards that took place before and after the SEC's September 2020 adoption of amended whistleblower program rules.

WHAT WE RECOMMENDED

We made eight recommendations to help further increase efficiencies in the SEC's whistleblower program, better prepare for future whistleblower program growth, reduce risk, and improve controls over whistleblower program data and communication with external parties. Management concurred with our recommendations, which will be closed upon completion and verification of the proposed actions. This report contains non-public information about the SEC's whistleblower program. We redacted the non-public information to create this public version.

WHAT WE FOUND

We reviewed whistleblower payments for a sample of Final Orders issued in fiscal year 2021 and determined that, in those instances, whistleblowers were paid in accordance with applicable rules and Final Orders. In addition, payments were approved before issuance, in accordance with OWB's policies and procedures. Moreover, the SEC took steps to improve whistleblower claims processing and tracking procedures, including (1) implementing an initiative to more efficiently develop the initial drafts of attorney declarations, (2) adopting certain rule amendments, and (3) implementing a modernized claims tracking system. However, before these efforts, OWB was experiencing a significant backlog in processing whistleblower claims, which increased the amount of time whistleblowers waited before receiving the Commission's Final Order. In addition, aspects of some improvements were not consistently implemented or fully leveraged. As a result, opportunities remain for OWB to further improve as the whistleblower program continues to grow.

We also reviewed a sample of claims packages and supporting artifacts and determined that some Claims Review Staff (CRS) determinations were approved when more than half of the CRS members were absent or recused. This occurred because the CRS did not implement an operating agreement detailing certain processes or control activities, such as the number of CRS members required to approve a claims package. Because the Commission relies on the CRS with respect to whistleblower awards, including denials and approvals of multi-million dollar awards, we believe a lack of guidelines, rules, and standards governing CRS actions and decisions increases the risk to the Commission's Final Orders.

When reviewing OWB's internal data management, we identified some inaccurate or incomplete data. These deficiencies occurred, at least in part, because OWB did not establish effective controls over manually inputted data entries used to track whistleblower claims and manage the whistleblower program. Without such controls, OWB continues to risk inaccurate and incomplete reporting of claims tracking data and, in some cases, delays in key whistleblower program processes.

We also found that OWB took steps to effectively communicate with external parties and promote awareness of the program. However, OWB did not always (1) timely respond to whistleblower hotline voicemails or maintain information to assess the timeliness of responses; (2) notify helpful whistleblowers that a time-sensitive opportunity to file a whistleblower claim was available, as instructed by OWB policy; and (3) post to its webpage the Commission's Final Orders. These conditions occurred, in part, because OWB policies and procedures did not sufficiently address these issues, creating opportunities for OWB to improve aspects of whistleblower program communication.

Lastly, we identified two matters that did not warrant recommendations. We discussed these matters with agency management, and encourage management to consider any actions needed in response.

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Abbreviations

CRS	Claims Review Staff
Dodd-Frank	Dodd-Frank Wall Street Reform and Consumer Protection Act
Enforcement	Division of Enforcement
Exchange Act	Securities Exchange Act of 1934
FY	fiscal year
GAO	U.S. Government Accountability Office
NDA	non-disclosure agreement
NoCA	Notice of Covered Action
OFM	Office of Financial Management
OIG	Office of Inspector General
OMI	Office of Market Intelligence
OWB	Office of the Whistleblower
Rule 21F	Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934
SEC, Commission, or agency	U.S. Securities and Exchange Commission
TCR	tips, complaints, and referrals
WB-APP	whistleblower application

Background and Objective

BACKGROUND

According to the U.S. Securities and Exchange Commission's (SEC, Commission, or agency) Office of the Whistleblower (OWB), assistance and information from a whistleblower who knows of possible securities law violations can be among the most powerful weapons in the law enforcement arsenal of the SEC. In 2010, Congress amended the Securities Exchange Act of 1934 (Exchange Act) to include section 21F and directed the SEC to make monetary awards to eligible individuals who voluntarily provide original information that leads to successful Commission enforcement actions resulting in monetary sanctions totaling more than \$1 million. These individuals, known as "whistleblowers," help the SEC identify potential fraud and securities law violations much earlier than might otherwise have been possible. According to OWB as of September 2022, information received from whistleblowers has resulted in orders for \$6.3 billion in total monetary sanctions, of which more than \$1.5 billion has been, or is scheduled to be, returned to investors harmed by violations of the federal securities laws. Moreover, since the inception of the SEC's whistleblower program in 2011, the Commission has awarded more than \$1.3 billion to over 300 individuals. In fiscal year (FY) 2021, the Commission awarded more than it ever had (about \$564 million) to the largest number of whistleblowers (108) in a single year.

Securities Whistleblower Incentives and Protection. On July 21, 2010, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank),¹ of which Section 922 amended the Exchange Act by adding Section 21F, "Securities Whistleblower Incentives and Protection."² Section 21F of the Exchange Act requires the SEC to make monetary awards, subject to certain limitations and conditions, to whistleblowers who voluntarily provide the Commission with original information about violations of the federal securities laws. The information must lead to a successful Commission enforcement action resulting in monetary sanctions totaling more than \$1 million.³ Although the determination of the amount of a whistleblower award is in the discretion of the Commission, awards must be at least 10 percent but not more than 30 percent of the total monetary sanctions collected.⁴ Congress also established a separate fund, the Investor Protection Fund,⁵ from which SEC whistleblower awards are paid.^{6,7} In addition, Section 924(d) of Dodd-Frank directed the SEC to establish a separate office

¹ Pub. L. No. 111-203 (2010).

² 15 U.S.C. § 78u-6.

³ 15 U.S.C. § 78u-6(b)-(c).

⁴ 15 U.S.C. § 78u-6(b).

⁵ 15 U.S.C. § 78u-6(g).

⁶ According to Dodd-Frank, Section 922(g), whenever the balance of the Investor Protection Fund falls below \$300 million, it is to be replenished with monetary sanctions collected by the Commission in any judicial or administrative action not added to a disgorgement fund or otherwise distributed to victims of a violation of the securities laws. See 17 U.S.C. § 78u-6(g)(3)(A).

⁷ According to amendments to Rule 21F, if there are insufficient amounts available in the Investor Protection Fund to pay the entire amount of an award within a reasonable period of time, payments will be made by giving priority to the payments based on the date that the collections for which the whistleblowers are owed payments. See 17 C.F.R. § 240.21F-14.

within the Commission to administer and enforce the provisions of Section 21F, and for that office to annually report to Congress on its whistleblower award program to include a description of the awards, case types, and financials of the Investor Protection Fund.⁸ Dodd-Frank also provided the Commission with authority to issue its own rules and regulations to further implement its whistleblower program.⁹ Accordingly, on August 12, 2011, the Commission adopted final rule *Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934* (commonly known as “Rule 21F”) to (1) define certain terms critical to the operation of the whistleblower program, (2) outline the procedures for applying for awards and the Commission’s procedures for making decisions on claims, and (3) generally explain the scope of the whistleblower program to the public and potential whistleblowers.¹⁰

On September 23, 2020, the SEC adopted amendments to Rule 21F, which became effective on December 7, 2020. Among other things, amended Rule 21F includes rules intended to increase efficiency in the whistleblower claims review process, and provides the SEC with additional tools for making whistleblower award determinations. Amended Rule 21F-6¹¹ establishes a new presumption that a meritorious award recipient automatically receives the maximum 30 percent award when (1) 30 percent of the monetary sanctions collected in the aggregate would yield an award of \$5 million or less, (2) there are no negative factors on the part of the whistleblower (such as, unreasonable reporting delay, culpability, or interference with a company’s internal compliance or reporting program), and (3) the claim does not trigger Rule 21F-16 (concerning whistleblowers who engage in culpable conduct).¹² However, the maximum-award presumption may be overcome if the whistleblower’s assistance was limited or “providing the enhancement would be inconsistent with the public interest, the promotion of investor protection, or the objectives of the whistleblower program.”¹³

On August 26, 2022, the SEC adopted two additional amendments to Rule 21F, which became effective on October 3, 2022. The first rule change broadens the circumstances in which the Commission may pay whistleblowers for their information and assistance in connection with non-SEC actions. The second rule change affirms the Commission’s authority to consider the dollar amount of a potential award for the limited purpose of increasing (but not lowering) an award.

OWB and the SEC’s Whistleblower Program. On May 25, 2011, the SEC established OWB as a separate office within the SEC’s Division of Enforcement (Enforcement). OWB’s mission is to protect investors by administering an efficient, high-quality whistleblower program that is responsive to whistleblower needs, and helps the Commission identify and stop securities law violations. OWB serves as the primary liaison between the SEC and individuals who have submitted information or are considering whether to submit information to the agency concerning a possible securities law violation. In

⁸ 15 U.S.C. § 78u-7(d).

⁹ 15 U.S.C. § 78u-6(j).

¹⁰ 17 C.F.R. § 240.21F.

¹¹ 17 C.F.R. § 240.21F-6.

¹² 17 C.F.R. § 240.21F-6(c).

¹³ 17 C.F.R. § 240.21F-6(c)(1)(iv).

FY 2021, OWB consisted of at least 25 personnel,¹⁴ including OWB management, attorneys, and support staff, all of whom had a role in executing the SEC's whistleblower program. This number is up from the start of our scope period, when in FY 2017 OWB consisted of about 16 personnel.

Since 2011, the SEC's whistleblower program has experienced significant growth. According to the SEC's 2021 whistleblower program annual report, FY 2021 marked many milestones, and the Commission made more whistleblower awards than in all prior years combined.¹⁵ As Table 1 shows, between FY 2017 and FY 2021, the Commission received more than 34,000 whistleblower tips and awarded over \$1 billion to 180 individuals. Additionally, OWB received more than 1,200 claims for awards (referred to hereafter as "whistleblower claims" or "claims").

TABLE 1. Summary of Whistleblower Tips, Claims, and Awards Between FY 2017 and FY 2021

FY	Tips Received	Claims Received	Individuals Awarded	Total Amount Awarded (About)
2017	4,484	228	12	\$50,000,000
2018	5,282	196	13	\$168,000,000
2019	5,212	241	8	\$60,000,000
2020	6,911	334	39	\$175,000,000
2021	12,210	245	108	\$564,000,000
Total	34,099	1,244	180	\$1,017,000,000

Source: Office of the Inspector General (OIG)-generated based on the SEC's whistleblower program annual reports.

Before calendar year 2022, OWB used a system known as Claims Tracker to track the lifecycle of a whistleblower claim from receipt of an award application (made on Form WB-APP) to payment or denial of an award. Then, in January 2022, OWB implemented a new system to modernize, standardize, and automate the tracking and management of whistleblower program information (modernized claims tracking system). OWB staff enter information into the modernized claims tracking system to capture workflows in a digital form to make finding records, profiles, and claims data easier. Additionally, the modernized claims tracking system has a reporting capability to extract data quickly for both scheduled and *ad hoc* reporting.

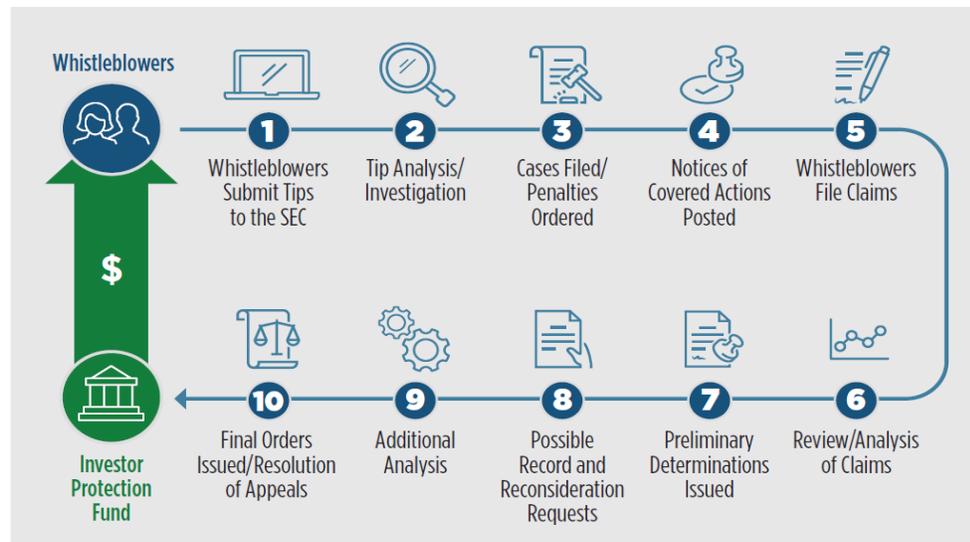
Stakeholders and the SEC's Whistleblower Award Process. The SEC's whistleblower award process, which is further described below, encompasses multiple stakeholders. In general, the process involves two offices within Enforcement: the Office of Market Intelligence (OMI) and OWB. OMI is most often associated with the SEC's tips, complaints, and referrals (TCR) system and TCR triage—the review, prioritization, and disposition of each TCR, including TCRs submitted by whistleblowers—whereas OWB administers and enforces the provisions of Section 21F of the Exchange Act. In addition to whistleblowers and/or their counsels, the whistleblower award process requires coordination between OMI and OWB, Enforcement investigative staff (primarily attorneys), the SEC's Claims Review Staff (CRS) (composed of

¹⁴ This included temporary detailees that joined and left OWB during the FY.

¹⁵ U.S. Securities and Exchange Commission, *Whistleblower Program 2021 Annual Report to Congress*; November 16, 2021.

certain Enforcement senior officers who have changed in number and position over time), the SEC's Office of Financial Management (OFM), and the Commission. Figure 1 depicts the SEC's 10-step whistleblower award process in which each of these stakeholders plays a role.

FIGURE 1. The SEC's Whistleblower Award Process



Source: U.S. Securities and Exchange Commission, *Whistleblower Program 2021 Annual Report to Congress*; November 16, 2021.

The process starts when a whistleblower submits a tip to the SEC through the agency's online TCR portal or via mail or fax (step 1). Upon receipt, OMI staff members examine the tip to determine whether it warrants or supports an investigation and, if so, staff investigate the alleged securities law violation(s) (step 2). If the investigation is successful and results in monetary sanctions over \$1 million (step 3), OWB will post a Notice of Covered Action (NoCA) on the SEC's website, notifying the public that an SEC enforcement case may be eligible for a whistleblower award (step 4). Whistleblowers then have 90 days from the NoCA post date to file a claim (at this point, a whistleblower may also be referred to as a "claimant") (step 5).¹⁶ From there, OWB attorneys work with relevant investigative or other Commission staff to develop an attorney declaration addressing the claims timely submitted. OWB attorneys use the attorney declaration and other relevant materials to review each claim received and prepare a recommendation to the CRS (step 6).¹⁷ The CRS considers OWB's recommendation and then issues a Preliminary Determination regarding each whistleblower's claim (step 7). A claimant may request the record that formed the basis of the determination and/or seek reconsideration (step 8). As applicable, OWB attorneys evaluate requests for reconsideration and recommend to the CRS a proposed Final Determination (step 9). The CRS considers OWB's recommendation and then submits a Proposed Final Determination to the Commission for review. If no Commissioner requests a review, the Proposed Final

¹⁶ 17 C.F.R. § 240.21F-10(a).

¹⁷ A key part of the whistleblower claim process is the preparation of a factual declaration by the primary staff attorney regarding the helpfulness and cooperation of the whistleblower(s).

Determination becomes the Final Order of the Commission¹⁸ (step 10). Monetary awards, if approved, are then made, and claimants who are issued a denial have a right to appeal.

Depending on the circumstances, the time between the submission of a whistleblower tip and when an individual may receive payment of an award can be several years. Appendix II describes in greater detail each step of the whistleblower award process.

Table 2 provides more detail about the roles and responsibilities of the stakeholders in the SEC's whistleblower award process.

TABLE 2. Roles and Responsibilities of Stakeholders in the SEC's Whistleblower Award Process

Stakeholder	Roles and Responsibilities
OWB	Administers the SEC's whistleblower program, establishes policies, communicates with program stakeholders, reviews whistleblower information, and determines award percentages. Undertakes appropriate due diligence to ensure a careful and thorough evaluation of all whistleblower claims, responds to hotline calls, tracks tips that are referred for Enforcement investigations, publicly posts NoCAs and Final Orders, and makes recommendations to the CRS on whistleblower award eligibility.
OMI	Reviews whistleblower tips, determines whether tips should be considered for investigation, and if so, assigns tips to one of the SEC's 11 regional offices, a specialty unit, or an Enforcement group at the SEC's Headquarters in Washington, DC.
Enforcement investigative staff	Conducts investigations of alleged securities law violations and completes attorney declarations.
CRS	Considers OWB's recommendations in accordance with the criteria set forth in Dodd-Frank and Rule 21-F, and issues Preliminary Determinations and Proposed Final Determinations, subject to the Commission's review.
Commission	Is provided an opportunity to review the CRS' Preliminary Determinations before such determinations are provided to a whistleblower, and makes Final Determinations for all whistleblower awards and Final Orders.
OFM	Issues whistleblower award payments pursuant to the Commission's Final Orders.

Source: *OIG-generated based on OWB's policies and procedures.*

Prior Coverage. The OIG has previously evaluated the SEC's whistleblower program, issuing a report in January 2013 that included two recommendations to aid the SEC in establishing performance metrics for key whistleblower program processes and to facilitate the Commission's monitoring of whistleblower program performance.¹⁹ Before that, the OIG reviewed the SEC's now defunct bounty program, issuing a report in March 2010 that included nine recommendations to improve the functioning of the bounty program.²⁰ Management concurred with each of the OIG's recommendations from these prior reports, and took corrective action sufficient to close the recommendations.

¹⁸ The Commission's Final Orders set forth the final disposition (that is, award or denial) of applications for awards received by OWB.

¹⁹ U.S. Securities and Exchange Commission, Office of Inspector General, *Evaluation of the SEC's Whistleblower Program* (Report No. 511; January 18, 2013).

²⁰ U.S. Securities and Exchange Commission, Office of Inspector General, *Assessment of the SEC's Bounty Program* (Report No. 474; March 29, 2010).

OBJECTIVE

The overall objective of this audit was to assess the growth of the SEC's whistleblower program and the functioning of key program controls, such as those for communicating with stakeholders, reviewing information provided by whistleblowers, and determining award amounts. The engagement scope period was from FY 2017 to FY 2021 and included whistleblower hotline calls, award claims, and awards that took place before and after the SEC's September 2020 adoption of amended whistleblower program rules. The OIG's assessment of aspects of OWB's control environment, including but not limited to controls over materials that may form the basis of an award determination (such as final sworn attorney declarations) is ongoing and will be reported on separately. Furthermore, an audit of the Investor Protection Fund was not in scope of this engagement.

To address our objective, we gathered information about the SEC's whistleblower program and interviewed personnel from Enforcement (including OWB and the CRS) and OFM. We (1) met with OWB personnel to gain an understanding of their mission and operations; (2) reviewed OWB policies and procedures; (3) assessed Enforcement's FY 2021 risk and control matrix and management assurance statement; and (4) obtained access to OWB's Claims Tracker system and the modernized claims tracking system, and performed system walkthroughs with OWB, CRS, and OFM staff. To evaluate the functioning of key whistleblower program controls addressed in this report, we also judgmentally selected and assessed a non-statistical sample of 29 claims packages from a population of 438 claims packages with at least one claimant during our scope period. Because sample items were judgmentally selected based on a variety of factors, including indicators of potential nonconformance with policies and procedures, our results cannot be projected to the total population. However, the evidence we gathered helped support our findings, conclusions, and recommendations. Finally, we analyzed whistleblower award amounts and the timeliness of awards using data obtained from OWB and OFM.

Appendix I of this report includes additional information about our scope and methodology, including our review of relevant internal controls and prior coverage.

Results

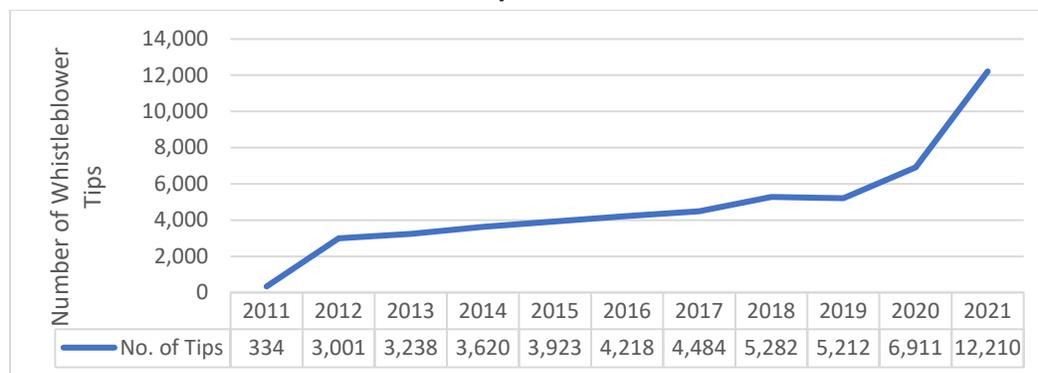
FINDING 1. THE SEC TOOK STEPS TO IMPROVE WHISTLEBLOWER CLAIMS PROCESSING AND TRACKING PROCEDURES TO INCREASE EFFICIENCIES AND BETTER PREPARE FOR WHISTLEBLOWER PROGRAM GROWTH, YET FURTHER IMPROVEMENTS CAN BE MADE

During the period we reviewed and into FY 2022, the SEC took steps to improve whistleblower claims processing and tracking procedures to increase efficiencies and better prepare for whistleblower program growth. These efforts included (1) implementing an initiative around May 2019 to more efficiently develop initial drafts of attorney declarations,²¹ (2) amending Exchange Act Rule 21F in September 2020 to include additional tools for efficiently making whistleblower award determinations, and (3) implementing a modernized claims tracking system in January 2022 to more efficiently and effectively administer the whistleblower program. However, before these efforts, OWB was experiencing a significant backlog in processing whistleblower claims, which increased the amount of time whistleblowers waited before receiving the Commission’s Final Order. Additionally, aspects of OWB’s attorney declaration initiative were not consistently implemented, and OWB’s modernized whistleblower claims tracking system capabilities were not fully leveraged. As a result, opportunities remain for OWB to further improve as the whistleblower program continues to grow.

Whistleblower Program Growth

As previously discussed, since its inception in 2011, the SEC’s whistleblower program has experienced significant growth. As Figure 2 shows, the number of whistleblower tips received each year gradually increased for most of the whistleblower program’s early history. However, during the period we reviewed (between FY 2017 and FY 2021), this number nearly tripled from 4,484 to 12,210.

FIGURE 2. Number of Whistleblower Tips Received Between FY 2011 and FY 2021

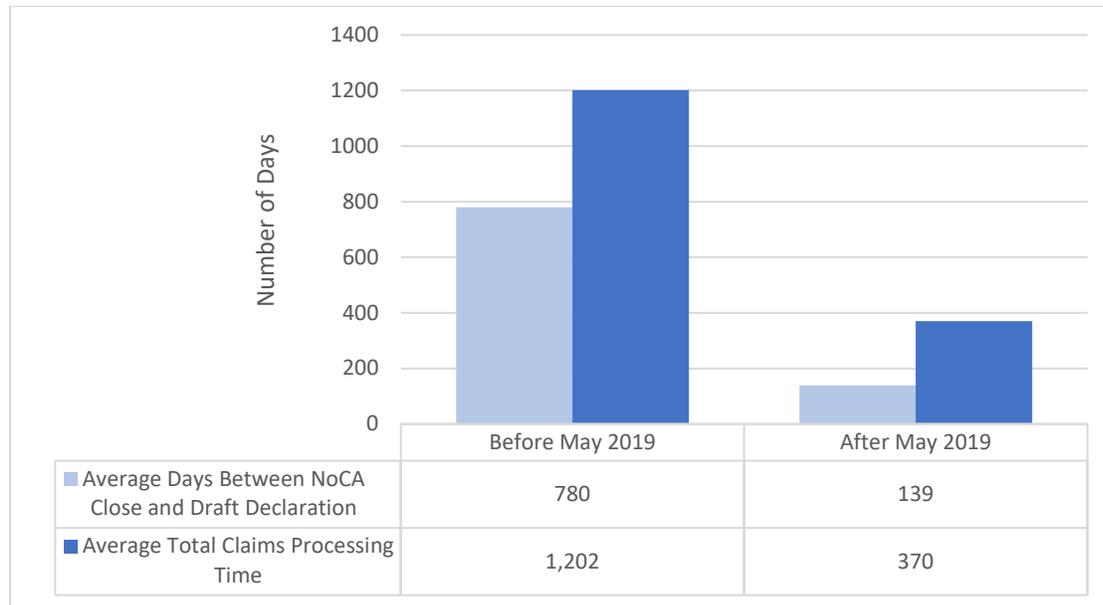


Source: *OIG-generated based on the SEC’s annual whistleblower reports from FY 2011 to FY 2021.*

²¹ Discussion in this finding of Enforcement attorney declarations is limited to the controls over and processes for developing initial drafts of unsworn declarations. As previously stated, the OIG’s assessment of aspects of OWB’s control environment, including but not limited to controls over materials that may form the basis of an award determination (such as final sworn attorney declarations), is ongoing and will be reported on separately.

In addition, between FY 2017 and FY 2021, OWB’s total award claims processing time (that is, the time between NoCA close date and Final Order date) averaged 1,116 days, or about 3 years and 1 month.²² As Figure 3 shows, for the early part of this period, much of the time spent processing whistleblower claims involved developing the initial drafts of attorney declarations. We verified this during our review of 29 judgmentally selected claims packages, noting that about 51 percent of the total award claims processing time for the applicable matters in our sample that closed before May 2019 was spent developing the initial drafts of attorney declarations.

FIGURE 3. Average Time Between NoCA Close and Draft Declaration Versus Average Total Claims Processing Time During Our Scope Period (Before and After May 2019)



Source: *OIG-generated based on information available in OWB’s modernized claims tracking system as of August 3, 2022. Between FY 2017 and FY 2021, the SEC processed 703 claims, including 631 claims before May 2019 and 72 claims after. The average of 780 days was calculated out of 422 claims and the average of 1,202 days was calculated out of 630 claims (as this was the information available in OWB’s modernized claims tracking system). The averages of 139 and 370 days were calculated out of 72 claims.*

According to the U.S. Government Accountability Office’s (GAO) *Standards for Internal Control in the Federal Government*, an entity determines its mission, sets a strategic plan, establishes entity objectives, and formulates plans to achieve its objectives.²³ OWB’s mission, in part, includes administering an efficient whistleblower program that is responsive to whistleblower needs. As we describe further below, during the period we reviewed and into FY 2022, the SEC took steps to improve whistleblower claims processing and tracking procedures. Specifically, OWB implemented new procedures—referred to as the OWB “declaration initiative”—to more efficiently develop the initial drafts of attorney declarations in support of the overall award claims process. The SEC also amended Exchange Act Rule 21F and implemented a modernized claims tracking system.

²² In some circumstances, ongoing litigation following the posting of a NoCA can delay the processing of claims. This was the case for one of the claims packages in our sample, which in part, prevented OWB from obtaining a draft declaration until nearly 3 years after the associated NoCA close date.

²³ U.S. Government Accountability Office, *Standards for Internal Control in the Federal Government* (GAO-14-704G, September 2014); Overview, OV2.03.

OWB Declaration Initiative

The OWB declaration initiative (implemented across Enforcement around May 2019 and codified in Division-wide guidance, as well as the *Office of the Whistleblower Policies and Procedures*, dated October 20, 2021) shifted responsibility and established guidance and timeframes for developing the initial drafts of attorney declarations describing the involvement of all individuals who apply for an award in connection with a successful enforcement action. Previously, a small number of OWB staff liaised with investigative staff (primarily Enforcement staff attorneys) who were involved with each covered action to prepare draft declarations, resulting in significant delays as OWB personnel sought necessary information to develop each draft. As part of the declaration initiative, investigative staff use a template—designed to elicit the information necessary to assess whether a claimant meets the eligibility criteria for an award, and if so, the appropriate award percentage to recommend—to prepare an accurate, complete, and consistent initial draft of each declaration, and then submit the draft declaration to OWB for review. Moreover, investigative staff are given 30 days to respond to OWB’s e-mail request for a draft declaration. If the draft declaration is not received within that timeframe, personnel from OWB’s Declaration Initiative Project Team are instructed to contact declarants by e-mail or phone to (1) remind them of the outstanding draft declaration; and/or (2) determine whether there are any issues or questions preventing declarants from preparing the draft declaration.

Efficiencies gained from the declaration initiative were reflected in the applicable claims packages we reviewed.²⁴ Specifically, on average 624 days elapsed between the NoCA close date and the development of an initial draft attorney declaration for the 20 claims packages we reviewed that closed before the declaration initiative. In contrast, for the 7 NoCAs we reviewed that posted after implementation of the declaration initiative (around May 2019), Enforcement staff attorneys provided OWB with draft declarations on average about 58 days after being requested to do so.

Although OWB has achieved efficiencies through its declaration initiative, further improvements can be made to ensure related processes are implemented consistently. For example, despite the efforts made, it took between 91 and 383 days for OWB to obtain 7 draft declarations related to claims packages we reviewed.²⁵ Personnel generally attributed these lengthy response times to Enforcement staff attorneys having other case duties. We noted that OWB can further improve its declaration initiative processes by tracking follow-up communications with Enforcement staff attorneys assigned to prepare draft declarations.

Exchange Act Rule 21F Amendments

As previously stated, on September 23, 2020, the Commission adopted amendments to Rule 21F, which became effective on December 7, 2020, and included tools for efficiently making whistleblower award determinations. Under these amendments, the Commission adopted a presumption setting awards at the

²⁴ Only 27 of the 29 claims packages we reviewed required the drafting of attorney declarations. For the remaining two, either no claimant had timely submitted a Form WB-APP and, therefore, no attorney declaration was needed, or OWB relied on an already completed attorney declaration developed for a prior related NoCA.

²⁵ This includes attorney declarations pertaining to NoCAs we reviewed that posted after May 2019 and earlier NoCAs without completed declarations, which OWB subsequently brought under the declaration initiative.

maximum 30 percent of the monetary sanctions collected for awards under \$5 million. When applicable, this presumption reduces the steps OWB and the CRS must take to determine whistleblower award amounts to recommend. The following statements were included in the SEC's 2021 whistleblower program annual report regarding the impact of the rule amendments:

Following the effective date of the Whistleblower Rule Amendments, the Commission applied the presumption approximately 89% of the time where the award amount was not more than \$5 million. The 30% presumption also allowed for increased consistency among awards and greater transparency to claimants and their counsel. Further, the 30% presumption assisted OWB in expediting the processing of award claims in FY 2021.²⁶

OWB's Claims Tracking System

In January 2022, OWB implemented a modernized claims tracking system designed to efficiently and effectively administer the SEC's whistleblower program. However, for most of the whistleblower program's existence, the SEC did not prioritize a system to assist OWB in streamlining daily work flow, and OWB lacked the resources and procedures to efficiently process a growing backlog of whistleblower applications.

Specifically, as early as 2013, agency staff identified the need for "a software solution that will assist and streamline OWB's daily work flow and track the progress of whistleblower complaints synchronized with various Enforcement data systems."²⁷ Without such a system in place, during the early years of the whistleblower program, OWB relied on a manual process using a spreadsheet and form system in SharePoint to track the lifecycle of a claim from receipt of the Form WB-APP to payment of the award. To mitigate the potential inefficiencies and inaccuracies posed by manually gathering and tracking data (discussed further in Finding 3), in 2016 the SEC's Requirement Center of Excellence began developing business requirements for an automated system. However, according to the then Enforcement Managing Executive, the agency's Capital Planning Committee, with his endorsement, decided not to fund the modernized claims tracking system project from May 2017 to June 2019 because of "very limited funding" and higher priority projects. As a result, no action was taken to develop a modernized system during that timeframe. Ultimately, as mentioned above, OWB did not migrate to its modernized claims tracking system until January 2022.

With the modernized claims tracking system's increased functionality and reporting capabilities, OWB should consider integrating alerts and reporting functions to ensure efficient processing of whistleblower claims, including tracking the drafting of attorney declarations.

OWB Processing Backlog of Whistleblower Claims

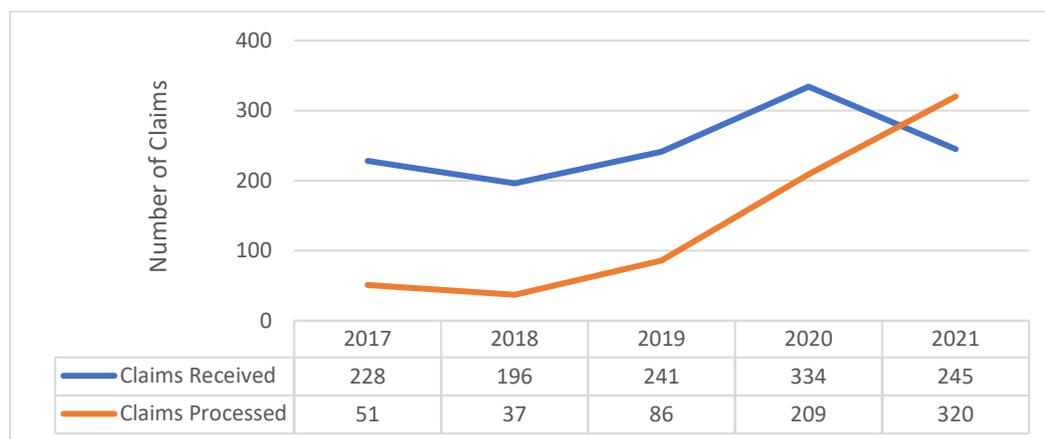
As stated above, the SEC made efforts to increase whistleblower program efficiencies. Those efforts were necessary, in part, to address a growing backlog of whistleblower claims. As Figure 4 shows, until

²⁶ U.S. Securities and Exchange Commission, *Whistleblower Program 2021 Annual Report to Congress*; November 16, 2021.

²⁷ U.S. Securities and Exchange Commission, *2013 Annual Report to Congress on the Dodd-Frank Whistleblower Program*; November 18, 2013.

FY 2021, OWB processed significantly fewer claims than were submitted by whistleblowers each year, resulting in a backlog. During the period we reviewed (between FY 2017 and FY 2021), whistleblowers submitted 1,244 claims, and OWB processed 703 claims.

FIGURE 4. Number of Whistleblower Claims Received Versus Processed Between FY 2017 and FY 2021



Source: *OIG-generated based on information from OWB’s modernized claims tracking system.*

This backlog was further reflected in our sample. Specifically, for at least 12 of the 29 claims packages we reviewed (or about 41 percent), OWB had not assigned staff to begin processing the associated whistleblower claims until between 122 and 852 days after receiving the claims. Information we collected supports that this was, at least in part, because of a lack of available resources and significant growth in the number of whistleblower claims received by the SEC.

However, in FYs 2020 and 2021, OWB made notable progress in addressing this backlog. During this timeframe—in addition to processing 230 more recent claims—OWB processed 299 claims related to NoCAs that had posted 3 to 10 years prior. As of September 2022, OWB continued to process 151 claims related to NoCAs that had posted 3 to 9 years prior. Once OWB addresses the remaining backlog, OWB should be able to better direct its staffing resources to processing claims closer to when OWB receives the claims.

With the implementation of the OWB declaration initiative, Rule 21F amendments, deployment of a modernized claims tracking system, and other efforts, the SEC has made progress in addressing the claims backlog and processing claims more efficiently. This is reflected in NoCAs in our sample that closed after May 2019, which on average took 471 days (or about 1 year and 4 months) to process from NoCA close date to issuance of the Commission’s Final Order. In contrast, the awards claim process took on average 1,170 days (or about 3 years and 3 months) for NoCAs in our sample that closed before May 2019. Additional improvements that ensure consistent implementation of the declaration initiative and fully leverage the capabilities of OWB’s modernized claims tracking system may further improve claims processing and tracking procedures to gain additional increases in efficiency and better prepare for future whistleblower program growth.

RECOMMENDATIONS, MANAGEMENT'S RESPONSE, AND EVALUATION OF MANAGEMENT'S RESPONSE

To further increase efficiencies and better prepare for future growth in the whistleblower program, we recommend that the Office of the Whistleblower:

Recommendation 1:

Take steps to improve follow-up processes related to developing initial drafts of attorney declarations including defining intervals for follow-up and procedures for consistently tracking follow-up communications with declarants.

Management's Response. Management concurred with the recommendation. OWB implemented the declaration initiative across the Division in May 2019. This has created significant efficiencies in the development of initial drafts of attorney declarations that are needed to support claim recommendations. Currently, OWB requests investigative staff to prepare declarations using a template designed to elicit the information necessary to assess the award claim. If the draft declaration is not received within 30 days, OWB personnel contact declarants to remind them of the outstanding draft declaration and/or determine whether there are any issues or questions preventing declarants from preparing the draft declaration. Further, OWB is currently leveraging the modernized claim tracking system, implemented in January 2022, to better track the sending and receipt of declaration to/from Enforcement. In addition, OWB is currently in the process of updating policies and procedures to provide for more consistent and periodic follow-up on outstanding declarations. Management's complete response is reprinted in Appendix III.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

Recommendation 2:

Develop and define in policies and procedures alerts and status reports generated within the modernized claims tracking system for tracking key steps throughout the whistleblower claims process.

Management's Response. Management concurred with the recommendation. In January 2022, OWB implemented a modernized technology solution, a workflow system, with claims queues that track each step in the claims process and the capability to generate automatic reports in an ongoing and consistent basis that track key steps through the claims process. OWB will also update policies and procedures related to claims processing to reflect the integration of the modernized claim tracking system. Management's complete response is reprinted in Appendix III.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

FINDING 2. THE CRS DID NOT IMPLEMENT AN OPERATING AGREEMENT GOVERNING ITS ACTIONS AND DECISIONS

We reviewed 24 applicable claims packages²⁸ and supporting artifacts and determined that, with respect to sampled items, Enforcement generally followed its procedures for reviewing whistleblower tips and claims and developing claims packages. However, we noted that the CRS' Preliminary or Proposed Final Determinations—which then became the Commission's Final Orders—for 3 of the claims packages we reviewed (or about 13 percent) were approved when more than half of the CRS members were absent or recused. This occurred because the CRS did not implement an operating agreement detailing certain processes or control activities, such as the number of CRS members required to approve a claims package. Federal project management best practices recommend that teams develop operating agreements (or charters) to establish guidelines, rules, and standards for members. In addition, federal internal control standards state that management should design control activities to achieve objectives and respond to risks. Because the Commission relies on the CRS with respect to whistleblower awards, including denials and approvals of multi-million dollar awards, we believe a lack of guidelines, rules, and standards governing CRS actions and decisions increases the risk to the Commission's Final Orders.

Role and Responsibilities of the CRS

According to Exchange Act Rule 21F, the Director of Enforcement convenes the CRS to review and evaluate timely whistleblower award claims and to make Preliminary and Proposed Final Determinations as to whether whistleblower claims should be allowed or denied. Moreover, if the CRS determines that a whistleblower claim should be allowed, the CRS establishes proposed award dollar and percentage amounts and other information for the Commission to consider when making its Final Order. Although the Commission is given an opportunity to review CRS Proposed Final Determinations, according to Enforcement officials, the Commission relies on the work of the CRS and adopts the vast majority of the CRS' Proposed Final Determinations as the Commission's Final Orders, without revision. Indeed, we verified that the Commission adopted the CRS' Proposed Final Determinations as the Commission's Final Orders for 23 of the 24 applicable claims packages we reviewed (or about 96 percent).

The CRS Did Not Implement an Operating Agreement

Despite the importance of the CRS' role, the CRS did not implement an operating agreement detailing certain processes or control activities, such as the number of CRS members required to approve award determinations. According to federal project management best practices,²⁹ an operating agreement, or team charter, documents how project teams work together and should include:

- responsibilities and authorities of team members,
- procedures for making team decisions,
- a tie-breaker for times teams are unable to reach consensus,

²⁸ Only 24 of the 29 claims packages we reviewed included the Commission's Final Orders. The remaining five were either still in progress at the end of our scope period or no claimant had timely submitted a Form WB-APP and, therefore, no Final Order was issued.

²⁹ Federal Acquisition Institute, *Project Manager's Guidebook* (November 24, 2015).

- information on how and when team meetings will be conducted, and
- a communication plan for ensuring all team members are aware of ongoing discussions and decisions as they are made.

In addition, according to GAO's *Standards for Internal Control in the Federal Government*, management should design control activities through policies and procedures to achieve objectives and respond to risks.³⁰

Agency officials noted that the CRS and its composition is governed by Exchange Act Rule 21F-10,³¹ nonetheless OWB developed a draft CRS charter dated May 2012. The draft charter, among other things, defined rules and standards pertaining to CRS member voting. For example, the draft charter—at a time when there were only five members on the CRS—stated, (b)(5)

However, the draft charter was never approved or implemented.

CRS Award Determinations Were Approved When More Than Half of the CRS Members Were Absent or Recused

The Director of ENF shared with us their belief that the CRS benefits from robust debate and that the staff should table decisions if only one or two members are present. However, we noted that some award determinations were approved when more than half of the CRS members were absent or recused. Specifically, for 3 of the 24 applicable claims packages we reviewed (or about 13 percent), only 2 CRS members approved the respective Preliminary or Proposed Final Determinations at a time when the CRS was composed of 6 Enforcement senior officers. In each of these three instances, three of the six CRS members were absent, one was recused, and two voted to approve.³²

A Lack of Guidelines, Rules, and Standards Governing the CRS Increases Risk

We acknowledge that the Commission—not the CRS—issues Final Orders related to whistleblower awards. Moreover, we agree that there is no quorum requirement for the CRS and that a single SEC senior officer may make recommendations to the Commission. Finally, we did not identify legislation, regulation, or policy that explicitly requires a CRS operating agreement or charter. However, Exchange Act Rule 21F does not prescribe guidelines, rules, and standards for CRS members, yet, as noted above, the vast majority of CRS award determinations are adopted as the Commission's Final Order. In some instances, this involves whistleblower awards in excess of a million dollars, as was the case for the three claims packages we identified that were approved by only two CRS members. Because the Commission relies on the CRS with respect to whistleblower awards, including denials and approvals of multi-million dollar awards, we believe a lack of guidelines, rules, and standards governing CRS actions and decisions does not align with federal internal control standards or project management best practices and increases the risk to the Commission's Final Orders.

³⁰ U.S. Government Accountability Office, *Standards for Internal Control in the Federal Government* (GAO-14-704G, September 2014); Overview and Principle 10, Design Controls Activities.

³¹ 17 C.F.R. § 240.21F-10.

³² The remaining 21 applicable claims packages we reviewed were approved by three or more CRS members.

RECOMMENDATION, MANAGEMENT'S RESPONSE, AND EVALUATION OF MANAGEMENT'S RESPONSE

To improve controls over Claims Review Staff actions and decisions and reduce risk to the whistleblower program, we recommend that the Claims Review Staff, in coordination with the Office of the Whistleblower:

Recommendation 3:

Develop an operating agreement (or charter) that includes rules and standards for the Claims Review Staff.

Management's Response. Management concurred with the recommendation. Consistent with the Exchange Act, the Director of Enforcement will develop, and update as needed, standard operating practices and procedures to guide the evaluation of award claims by the Claims Review Staff. Management's complete response is reprinted in Appendix III.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

FINDING 3. OWB SHOULD IMPROVE CONTROLS OVER DATA RELIABILITY TO ENHANCE WHISTLEBLOWER PROGRAM MANAGEMENT AND REPORTING

Federal internal control standards emphasize the importance of accurate and complete information. Additionally, OWB sought a new claims tracking system, in part, to modernize, standardize, and automate the tracking and management of whistleblower program data. As previously noted, in January 2022, OWB implemented its modernized claims tracking system. During the transition to the new system, OWB identified and corrected some deficiencies in its management of whistleblower program data, though OWB can further improve whistleblower program data reliability controls. For example, we identified inaccurate or incomplete data (including final award data and other information for tracking key steps in the whistleblower award process) associated with a number of claims packages from our scope period, which we ultimately selected for review. These deficiencies were not all corrected by migrating to the modernized claims tracking system and occurred, at least in part, because OWB did not establish effective controls over manually inputted data entries used to track whistleblower claims and manage the whistleblower program. Without such controls, OWB continues to risk inaccurate and incomplete reporting of claims tracking data and, in some cases, delays in key whistleblower program processes. Furthermore, to compensate for the lack of reliable claims tracking data, OWB generated redundant spreadsheets and tracking documents outside of its former claims tracking system, which was not an efficient use of OWB's limited resources.

OWB Addressed Some Data Reliability Deficiencies, Though Some Data Used To Track Claims and Manage the Whistleblower Program Were Found to Be Inaccurate or Incomplete

GAO's *Standards for Internal Control in the Federal Government* states that management should use information that is, among other things, accurate and complete to achieve objectives.³³ Additionally, the document used to support the need for the modernized claims tracking system (OWB's Business Requirements Document) identified several risks related to the tracking and management of whistleblower information. During the end of our scope period and into FY 2022, OWB prepared to migrate whistleblower program data (including data associated with individual claims packages and awards) to the modernized claims tracking system, including checking for and correcting inaccurate, inconsistent, and incomplete data entries. These efforts addressed many of the initial data reliability deficiencies that we identified while assessing claims tracking data from FY 2017 to FY 2021. For example, we performed logic checks of the data—that is, checks that determine if the values observed in the data make sense given other values—and found 16 anomalies involving blank or incorrect date field entries. In subsequent updates to its data universe, OWB corrected these anomalies. Moreover, although we performed only a limited review of the modernized claims tracking system, we determined that it includes controls to ensure required data fields are completed. Nonetheless, we identified data reliability deficiencies that were not corrected by migrating to the modernized claims tracking system, or that existed in claims tracking spreadsheets OWB provided in response to our requests. These

³³ U.S. Government Accountability Office, *Standards for Internal Control in the Federal Government* (GAO-14-704G, September 2014); Principle 13, Use Quality Information.

deficiencies were associated with 19 claims packages from our scope period, which we ultimately selected for review. For example:

- *Inaccurate Entry for Final Award Percentage.* OWB's Business Requirements Document identified a risk that an unscheduled request for a report may result in providing inaccurate numbers because of manual methods for gathering data. Indeed, for one claims package we reviewed, OWB staff erroneously entered the wrong final award percentage in OWB's previous claims tracking system. OWB staff did not discover this manual data entry error before migrating the data to the modernized claims tracking system. As a result—because of this one specific data entry error—tabulated fiscal year and quarterly award totals in the modernized claims tracking system were off by about \$159,000. After we brought this inaccuracy to OWB's attention, OWB corrected the award payment amount, but as of October 2022, the final award percentage error remained.
- *Incomplete Entries for Tracking Confidentiality Agreements.* OWB's Business Requirements Document identified a risk involving the tracking of claimant requests, stating "timeliness for Claimants to request a record or request for reconsideration are *[sic]* difficult to track manually. Claimants will miss deadlines and not be eligible for an award if OWB is not able to automatically track the different deadlines for each award." For three claims packages we reviewed, OWB's prior claims tracking system and the modernized claims tracking system were both missing the date on which OWB sent claimants a confidentiality agreement, which claimants must first complete if they wish to review the records used by the CRS to support its Preliminary Determination. For a separate claims package we reviewed, OWB did not record receipt of a claimant's signed confidentiality agreement on the date it was received. As a result, OWB had the claimant resubmit the confidentiality agreement more than a month later. This delay contributed to OWB being unable to provide the records to the claimant until nearly 4 months after the claimant initially provided the signed confidentiality agreement—ultimately increasing the total time necessary to disposition the claimant's application for a whistleblower award.³⁴
- *Inaccurate and Incomplete Entries in OWB's Final Order Spreadsheet.* According to the *Office of the Whistleblower Policies and Procedures*, dated October 20, 2021, "there is a [Final Order] spreadsheet maintained by the OWB paralegals that tracks [Final Orders] posted to the website." Furthermore, whether a Final Order became final by Commission review or by operation of law, "both methods are tracked on the Final Order spreadsheet." The Final Order spreadsheet is an important management tool because OWB staff members rely on it to ensure public postings are timely and accurate. We reviewed the spreadsheet and noted that it contained inaccurate Final Order dates for three of the claims packages we reviewed.³⁵ Furthermore, Final Order entries for two other claims packages we reviewed were missing from the Final Order spreadsheet. Finally, the Final Order for one claims package we reviewed was

³⁴ Based on the work we performed, we did not identify any instances in which claimants were deemed ineligible because of inaction or delays on the part of whistleblower program management.

³⁵ The recorded Final Order dates for these three claims packages were inaccurate by between 10 to 31 days when compared to the Final Orders themselves.

included on the spreadsheet under the wrong NoCA identifier. Final Order information was accurately recorded for the remaining 19 applicable claims packages in our sample. As we discuss in Finding 4, such data reliability deficiencies in OWB's processes for tracking Final Orders resulted in delayed postings to the SEC's public website.

- *Incomplete Entries in List of Proposed Final Determinations Reviewed by the Commission.* We sought to assess controls over data confirming that the Commission was notified of the CRS' Proposed Final Determinations. In response, OWB provided a spreadsheet of relevant data (including the dates upon which the Commission was notified) reported to have been exported from the office's previous claims tracking system. We noted that the spreadsheet was missing data for at least five Proposed Final Determinations, presumably because the data were missing from or had not been entered into the claims tracking system. We subsequently reviewed all five corresponding claims packages as part of our sample, including one claims package that had been approved via Final Order at least 7 months beforehand.
- *Incomplete Entries in OWB's Record Request Log.* As we note above, OWB identified risks involving the tracking of claimant requests for information used to disposition whistleblower applications (that is, record requests), and providing *ad hoc* reports. We sought to assess controls over data useful to track and monitor such record requests and ensure that the SEC timely made requested materials available to claimants. OWB provided a spreadsheet of relevant information reported to have been exported from the office's previous claims tracking system. We noted that the exported data were missing dates and other entries for record requests related to at least seven claims packages, which we selected for review. In one such case where the date for the deadline to request records was missing, it appears that OWB provided the records to the claimant 175 days after receiving the claimant's confidentiality agreement.

Controls Over Manual Data Entries Need Improvement To Address Risks and Enhance Whistleblower Program Management

The conditions we observed occurred, at least in part, because OWB did not establish effective controls over manual data entries used to track whistleblower claims and manage the whistleblower program. As a result, OWB continues to risk inaccurate and incomplete reporting of claims tracking data and, in some cases, delays in key whistleblower program processes such as public postings and responding to claimants' record requests. Furthermore, to compensate for the lack of reliable claims tracking data, OWB generated redundant spreadsheets and tracking documents outside of its former claims tracking system, which was not an efficient use of OWB's limited resources. Although OWB has made efforts to correct data reliability deficiencies in its transition to the modernized claims tracking system, additional controls are needed to ensure that whistleblower program data can be relied on to enhance program management and reporting.

RECOMMENDATIONS, MANAGEMENT'S RESPONSE, AND EVALUATION OF MANAGEMENT'S RESPONSE

To improve controls over data contained in its modernized claims tracking system and enhance whistleblower program management and reporting, we recommend that the Office of the Whistleblower:

Recommendation 4:

Implement a process to independently validate that data manually entered into the modernized claims tracking system are accurate and match source documents, where available.

Management's Response. Management concurred with the recommendation. OWB has begun conducting regular, periodic testing to ensure the accuracy of data that was migrated from the predecessor system and entered into the modernized claims tracking system. The system is capable of running regular, automated reports to ensure that OWB staff is accurately updating the status of claims on a regular basis and includes inherent checks. OWB will develop additional internal controls for the periodic testing of claims data in the modernized claims tracking system. Management's complete response is reprinted in Appendix III.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

Recommendation 5:

Develop and document policies and procedures to ensure completeness of data in the modernized claims tracking system.

Management's Response. Management concurred with the recommendation. Currently, OWB regularly reports on certain key metrics related to the claims process through the modernized claims tracking system, and will update its policies and procedures to ensure that data is entered into the system and regularly reviewed for accuracy. Management's complete response is reprinted in Appendix III.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

FINDING 4. OWB TOOK STEPS TO EFFECTIVELY COMMUNICATE WITH EXTERNAL PARTIES BUT CAN IMPROVE ASPECTS OF WHISTLEBLOWER PROGRAM COMMUNICATION

As previously stated, assistance and information from a whistleblower who knows of possible securities law violations can be among the most powerful weapons in the law enforcement arsenal of the SEC. Federal internal control standards also recognize the importance of communicating with external parties so that external parties can help an entity achieve its objectives. Generally, we found that OWB took steps to effectively communicate with external parties and promote awareness of the program. However, OWB did not always timely:

- respond to whistleblower hotline voicemails or maintain information to assess the timeliness of responses;
- notify helpful whistleblowers that the SEC had publicly posted a NoCA (and, therefore, a time-sensitive opportunity to file a whistleblower claim was available);³⁶ and
- post to its webpage the Commission's Final Orders to notify the public of the disposition of whistleblower claims.

These conditions occurred, in part, because OWB policies and procedures did not (1) address exceptions to its 24-business-hour return call standard or expectations for documenting exceptional circumstances, (2) include requirements for tracking and ensuring consistent notification of posted NoCAs to all helpful whistleblowers, and (3) establish timeframes for posting Final Orders to its webpage. As a result, OWB cannot ensure that external parties are contacted timely and that OWB's webpage—designed to provide transparency into the SEC's whistleblower program efforts—is updated consistently to include all recent Final Orders of the Commission.

OWB Promoted Awareness of the Whistleblower Program

GAO's *Standards for Internal Control in the Federal Government* makes clear that effective information and communication (including communication with external parties) are vital for an entity to achieve its objectives.³⁷ One of OWB's primary goals is to promote awareness of the SEC's whistleblower program and educate the public about the program through OWB's webpage.³⁸ We found that, as of December 2022, OWB's webpage included information to meet this goal, such as frequently asked questions, information about whistleblower rules and rule amendments, guidance for whistleblower award determinations, and information on how to contact OWB. The webpage also linked to resources for submitting a tip or claiming an award, as well as a listing of NoCAs and Final Orders. Moreover, between FY 2017 and FY 2021, OWB conducted 47 outreach engagements, including webinars, presentations,

³⁶ OWB's policy instructs OWB staff to contact helpful whistleblowers and inform them of NoCA postings and the award claims process. However, as stated in the SEC's *Whistleblower Program 2021 Annual Report to Congress*, it is ultimately a whistleblower's responsibility to make a timely application for award.

³⁷ U.S. Government Accountability Office, *Standards for Internal Control in the Federal Government* (GAO-14-704G, September 2014); Information and Communication overview and Principle 15, Communicate Externally.

³⁸ U.S. Securities and Exchange Commission, *Whistleblower Program 2021 Annual Report to Congress*; November 16, 2021.

and conferences to publicize and promote the whistleblower program. Despite the challenges of COVID-19, during FYs 2020 and 2021 OWB continued to participate in engagements aimed at promoting and educating the public about the Commission's whistleblower program, albeit primarily virtually.

OWB's typical audience included potential whistleblowers, whistleblower counsel, corporate compliance counsel, and other professionals from across the United States and abroad. Furthermore, the SEC regularly issues press releases concerning the whistleblower program and whistleblower awards, which helps promote public awareness. Whistleblower program annual reports to Congress (required by Dodd-Frank³⁹ and posted to OWB's webpage) also further promote and publicize the program. The reports must include the number and type of awards granted, the finances of the Investor Protection Fund, and audited financial statements.⁴⁰ We reviewed annual reports from 2017 through 2021 and determined that the reports included the information required by Dodd-Frank and, generally, the number of tips, award amounts, and number of awardees reported each year was accurate when compared to source documents.

Opportunities Remain To Improve Controls Over Whistleblower Program Communication

Although OWB promoted awareness of the whistleblower program, as described in the sections that follow, opportunities remain to improve controls over whistleblower program communication. Specifically, OWB did not always timely (1) respond to whistleblower hotline voicemails or maintain information to assess the timeliness of responses; (2) notify helpful whistleblowers that the SEC had publicly posted a NoCA; and (3) post to its webpage the Commission's Final Orders dispositioning whistleblower claims.

- *Responses to Whistleblower Hotline Voicemails.* OWB's frequently asked questions webpage states, "To help promote the agency's whistleblower program and establish a line of communication with the public, OWB operates a whistleblower hotline where whistleblowers, or would-be whistleblowers, their attorneys, or other members of the public with questions about the program may call. Individuals leave messages on the hotline, which are returned by OWB attorneys within 24 business hours."⁴¹ OWB's *Whistleblower Public Hotline – Phone Call Policies and Procedures*, dated May 2021, also references the practice of returning calls within 24 business hours and states that information about each voicemail should be documented on OWB's Hotline Call Log. We found that, in most cases between FY 2017 and FY 2021, OWB responded in a timely manner to voicemails left on the whistleblower hotline. However, for about 10 percent of the voicemails logged during this time (1,438 of 15,087), either OWB returned the calls after 24 business hours, or we could not assess the timeliness of OWB's response because staff did not document certain information on OWB's Hotline Call Log.

Specifically, OWB returned 116 voicemails between 24 and 48 business hours and 29 voicemails after 48 business hours, including voicemails that required Americans with Disabilities Act

³⁹ Dodd-Frank, Pub. L. No. 111-203, § 922, 124 Stat. 1845.

⁴⁰ Dodd-Frank, Pub. L. No. 111-203, § 922(g)(5).

⁴¹ OWB considers business hours as the 8 hours each day in which the Federal government is operating.

assistance, were on an alternative response listing, or were from international callers. Additionally, logged information for another 1,293 voicemails did not include information to determine whether the voicemails were returned within 24 business hours. According to OWB's Hotline Call Log, some of these voicemails did not relate to alleged securities law violations or were responded to in writing.

We noted that OWB's hotline policies and procedures did not address exceptions to the 24-business-hour standard or expectations for documenting exceptional circumstances. As a result, OWB management cannot always ensure that whistleblower voicemails are logged and addressed appropriately. An additional opportunity for improvement regarding OWB's Hotline Call Log is included in the Other Matters of Interest section of this report.

- *Notifications to Helpful Whistleblowers.* Rule 21F-10 requires that claimants submit Form WB-APP in response to a NoCA posting within 90 days.⁴² Furthermore, OWB's webpage states the responsibility to apply for an award before the deadline passes lies solely with the whistleblower.⁴³ However, OWB's policy instructs OWB staff to contact helpful whistleblowers and inform them of NoCA postings and the award claims process. In the case of one claims package we reviewed, OWB staff did not notify the helpful whistleblowers of the NoCA posting, and the whistleblowers did not submit their respective Form WB-APPs until more than 165 days after the NoCA posting. This occurred because the OWB staff processing the claims believed Form WB-APPs previously submitted in response to a different NoCA would cover the new NoCA as well. In this case, OWB accepted the Form WB-APPs after the 90-day filing deadline.⁴⁴ OWB can better ensure that all helpful whistleblowers—in a consistent fashion—are made aware that a successful enforcement action is complete and that they can file a Form WB-APP by establishing procedures to monitor when OWB staff notify helpful whistleblowers of NoCA postings.
- *Posting Final Orders to OWB's Webpage.* OWB's policy includes instructions for ensuring the Commission's Final Orders are posted to OWB's webpage. In addition, the SEC's whistleblower program annual reports state, "Final Orders of the Commission are publicly available on the Commission's website and OWB's webpage." However, between August 31, 2021, and January 12, 2022, OWB posted 14 Final Orders to its webpage that were between 1 month to more than 2 years old. In addition, OWB did not post two Final Orders related to claims packages we reviewed until we inquired about them, despite more than 11 months having elapsed since their respective Final Order dates. Notably, OWB policies did not include a timeframe for posting Final Orders. As a result, OWB management cannot ensure Final Orders are timely posted to notify the public of the disposition of whistleblower claims.

⁴² 17 C.F.R. § 240.21F-10(a).

⁴³ <https://www.sec.gov/whistleblower/frequently-asked-questions#faq-13> (last accessed October 11, 2022).

⁴⁴ Ultimately, the Commission treated the award claims as timely under the unique facts and circumstances presented, including the claimants' intention to apply for awards in connection with actions arising out of the same nucleus of operative facts, the NoCA posting cross-referenced the proceeding later posted as a covered action, the claimants were unrepresented, and the claims for the covered actions had not yet been adjudicated.

Without policies and procedures for implementing these control activities, OWB management cannot ensure that external parties are contacted timely and that OWB's webpage—designed to provide transparency into the SEC's whistleblower program efforts—is updated consistently to include all recent Final Orders of the Commission.

RECOMMENDATIONS, MANAGEMENT'S RESPONSE, AND EVALUATION OF MANAGEMENT'S RESPONSE

To further improve controls for communicating with external parties, we recommend that the Office of the Whistleblower:

Recommendation 6:

Update the *Whistleblower Public Hotline – Phone Call Policies and Procedures* to account for documenting exceptions to the 24-business-hour rule.

Management's Response. Management concurred with the recommendation. OWB is currently updating its policies and procedures to document the exceptions to the 24-business hour rule. Management's complete response is reprinted in Appendix III.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

Recommendation 7:

Establish monitoring controls to ensure that, in accordance with existing Office of the Whistleblower policy, all helpful whistleblowers are timely and consistently notified of Notice of Covered Action postings.

Management's Response. Management concurred with the recommendation. OWB is currently considering how to leverage its modernized claims tracking system to better track helpful whistleblowers and monitor outreach to those individuals, and will update policies and procedures to reflect new or refined processes. Management's complete response is reprinted in Appendix III.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

Recommendation 8:

Update policies and procedures to establish required timeframes for publicly posting the Commission's Final Orders.

Management's Response. Management concurred with the recommendation. OWB will update its policies and procedures to reflect timeframes for the posting of the Final Orders. Management's complete response is reprinted in Appendix III.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

FINDING 5. WHISTLEBLOWERS WERE PAID IN ACCORDANCE WITH APPLICABLE RULES AND FINAL ORDERS, AND PAYMENTS WERE APPROVED BEFORE ISSUANCE

Rule 21F of the Exchange Act, including applicable amendments, establishes the framework for SEC whistleblower awards. The awards are issued from the agency's Investor Protection Fund once OWB communicates to OFM the Commission's approval. We reviewed whistleblower payments for a sample of Final Orders issued in FY 2021 and determined that, in those instances, whistleblowers were paid in accordance with applicable rules and Final Orders. In addition, payments were approved before issuance in accordance with OWB's policies and procedures.

According to Rule 21F of the Exchange Act, the SEC issues monetary awards to eligible individuals who voluntarily provide original information that leads to successful Commission enforcement actions resulting in monetary sanctions over \$1 million. Awards must be made in an amount that is at least 10 percent but not more than 30 percent of the total monetary sanctions collected.⁴⁵ Moreover, whistleblowers are paid from the Investor Protection Fund.⁴⁶

Although an audit of the Investor Protection Fund was not in scope of this engagement, we selected a non-statistical, judgmental sample of 11 of the 98 Final Orders issued in FY 2021 (or about 11 percent) and determined that all 11 whistleblower award payments were paid in accordance with Rule 21F of the Exchange Act and the applicable Final Orders. To support this conclusion, we (1) reviewed Disclosure Charts and Final Orders to determine the sanction amount collected and award percentage, (2) re-performed the award payment calculation, and (3) verified these amounts with OFM. We determined that, for the 11 Final Orders we reviewed, the SEC collected monetary sanctions before payment; award percentages were between 10 and 30 percent, as required; and award payment calculations were accurate. In addition, we confirmed that the payments were made from the Investor Protection Fund by obtaining the corresponding accounting journal entries.

We also reviewed the 11 Final Orders for compliance with the amendment to Rule 21F that became effective on December 7, 2020. Amended Rule 21F applied to 8 of these 11 Final Orders because they were issued after December 7, 2020, and thus the whistleblowers should have received the maximum 30 percent award unless a negative factor was present. Overall, in these eight matters, we found that OWB complied with the amended Rule 21F and either the whistleblowers received the maximum-award percentage, or OWB documented the negative factor that reduced the award percentage.⁴⁷

Finally, we sought to assess whether whistleblower payments were approved in accordance with OWB's policies and procedures. According to those documents, once monetary sanctions are collected and Final Orders are issued, OWB submits a request to OFM (via e-mail) to authorize an award payment. OWB's payment authorization e-mail communicates to OFM the Commission's approval to make a whistleblower award payment pursuant to the Commission's Final Order. The payment authorization e-mail also

⁴⁵ 15 U.S.C § 78u-6(b)(1).

⁴⁶ 15 U.S.C § 78u-6(g).

⁴⁷ In seven of these matters, the whistleblowers received the maximum-award percentage. For the remaining matter, the whistleblower received less than the maximum-percentage because one negative factor was present, which OWB documented.

includes a calculation of the award payment. We obtained the payment authorization e-mails for the 11 Final Orders we reviewed and found that the award payment calculations included therein matched the amount issued from the Investor Protection Fund. Furthermore, we determined that payments were approved before issuance in accordance with OWB's policies and procedures.

We did not find any material concerns related to the whistleblower payment process; therefore, we are not making any recommendations at this time.

Other Matters of Interest

During our audit, we identified two matters that did not warrant recommendations. As we describe further below, these matters related to (1) Enforcement's use of an incorrect non-disclosure agreement (NDA) and interactions with a whistleblower in one matter, and (2) OWB's Hotline Call Log. Although we are not making recommendations, we discussed these matters with Enforcement management and encourage management to consider any actions needed in response.

Enforcement Did Not Use the Correct NDA and, Based on SEC Non-Public Information Received, a Whistleblower Offered Additional Analysis

During our review of 1 claims package from our sample of 29, we identified an instance in which Enforcement provided SEC non-public information to a claimant for analysis but did not use the correct NDA. Additionally, subsequent to receiving the SEC non-public information, the claimant identified a different theory of wrongdoing than initially stated in the whistleblower tip.

An NDA is a binding agreement where one or more parties agrees not to further disclose information exchanged between the parties that is confidential in nature. The SEC provides NDAs to claimants when sharing SEC non-public information for additional analysis. Claimants' right to access SEC non-public information is provided for by Rule 21F, which informs claimants that they may be required to enter into an NDA covering any non-public information they receive from the Commission, "including a provision that a violation of the agreement may lead to [the claimant's] ineligibility to receive an award."⁴⁸

During the review of the claim in question, Enforcement staff provided the claimant with SEC non-public information for the claimant to analyze and possibly substantiate the claimant's allegations. As part of this arrangement, Enforcement required the claimant to sign an NDA and then gave the claimant a significant amount of documents and data the SEC obtained during the course of its investigation. However, the NDA executed by the claimant did not contain any provision placing the claimant on notice that a violation of the terms of the NDA may prevent the claimant from recovering as a whistleblower. Accordingly, the NDA did not follow Rule 21F, nor did it place the claimant on notice of the severity of a potential breach of the NDA. We met with Enforcement personnel and learned that the NDA may have been drafted using an expert-witness NDA⁴⁹ as a template instead of a specific whistleblower NDA template.

Furthermore, this same claimant used the SEC non-public documents and data to develop a different theory of wrongdoing than that which the claimant had initially alleged. The Enforcement staff attorney declaration states, "while [the claimant] did not find evidence corroborating [the claimant's initial whistleblower tip], [the claimant] offered observations and insights regarding [another motive] that

⁴⁸ 17 C.F.R. § 240-21F-8(b)(4), "Eligibility and forms."

⁴⁹ The SEC may enter into NDAs with expert witnesses who are typically industry professionals that can review and opine on specific documents or issues within a case or matter. However, unlike claimants in the whistleblower program, expert witnesses do not stand to receive a percentage of the sanctions recovered in a successful enforcement action. Instead, the SEC typically pays expert witnesses an hourly rate. Accordingly, an expert-witness NDA would not need to contain the same provision as a claimant's NDA where the claimant is ultimately gaining access to SEC non-public information for further analysis to prospectively recover under the whistleblower program.

ultimately helped inform the final action in this matter.” Although it appears that the claimant offered additional observations and insights entirely on the claimant’s own volition without being asked by the SEC, this practice blurs the line between whistleblowers and expert witnesses. Ultimately, the Commission determined that the claimant’s new theory was helpful and that it led to a successful enforcement action, resulting in the claimant receiving an award of about \$500,000.

OWB’s Hotline Call Log Could Be Improved by Including NoCA Numbers

During our review of OWB’s Hotline Call Log, we identified an opportunity to improve logged information by including a field for NoCA numbers. According to the *Whistleblower Public Hotline – Phone Call Policies and Procedures*, dated May 2021, the following fields should be completed in the call log:

- Name of the caller
- Time of voicemail message
- Summary of the voicemail message
- Names of OWB staff and anyone else on the return call
- Summary of the return call
- Time and date of the return call
- Substance of the response
- Follow up steps, if any

Although we observed that, in some instances, OWB’s Hotline Call Log included NoCA numbers in the summary of return calls, it was not required by OWB’s policy and procedures. Requiring NoCA numbers, when applicable, in OWB’s Hotline Call Log could improve OWB’s ability to (1) attribute the information logged to a related claim, and (2) identify and respond to a caller who may have previously called about the same NoCA.

Appendix I. Scope and Methodology

We conducted this performance audit from September 2021 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Objective and Scope

The overall objective of this audit was to assess the growth of the SEC's whistleblower program and the functioning of key program controls, such as those for communicating with stakeholders, reviewing information provided by whistleblowers, and determining award amounts. The engagement scope period was from FY 2017 to FY 2021 and included whistleblower hotline calls, award claims, and awards that took place before and after the SEC's September 2020 adoption of amended whistleblower program rules. Furthermore, an audit of the Investor Protection Fund was not in scope of this engagement.

Methodology

To address our objective, among other work performed, we conducted fieldwork at the SEC's Headquarters in Washington, DC, and held meetings with SEC staff from regional offices. We gathered information about the SEC's whistleblower program and interviewed personnel from Enforcement (including OWB and the CRS) and OFM.

To assess whether the SEC established an effective internal control system, we

- met with OWB personnel to gain an understanding of their mission and operations;
- reviewed Enforcement and OWB policies and procedures;
- assessed OWB's FY 2021 risk control matrix and management assurance statement; and
- obtained access to OWB's Claims Tracker system and the modernized claims tracking system, and performed system walkthroughs with OWB, CRS, and OFM staff.

Additionally, to evaluate the functioning of key whistleblower program controls addressed in this report, we judgmentally selected and assessed a non-statistical sample of 29 claims packages from a population of 438 claims packages with at least one claimant during our scope period. Because sample items were judgmentally selected based on a variety of factors, including indicators of potential nonconformance with policies and procedures, our results cannot be projected to the total population. However, the evidence we gathered helped support our findings, conclusions, and recommendations. Finally, we analyzed whistleblower award amounts and the timeliness of awards using data obtained from OWB and OFM.

Internal Controls

We identified and assessed internal controls, applicable internal control components, and underlying principles significant to our objective, as described below.

Control Environment. We assessed aspects of OWB's control environment, including OWB's remediation of deficiencies, organizational structure, and documentation of its internal control system. We also met with those assigned responsibility for achieving OWB's objectives, including OWB's Chief and an Assistant Director. The OIG's assessment of other aspects of OWB's control environment, including but not limited to controls over materials that may form the basis of an award determination (such as final sworn attorney declarations), is ongoing and will be reported on separately.

Risk Assessment. We obtained and reviewed OWB's FY 2021 Risk Control Matrix to identify risks and controls related to the SEC's whistleblower program. We assessed risks identified by the SEC. We also identified risks we determined to be inherent to the whistleblower program and received from OWB management responses explaining how each risk was mitigated. Finally, we reviewed incident reports from the Office of Information Technology, Information Security division, related to the SEC's whistleblower program.

Control Activities. We reviewed applicable federal laws and guidance, SEC Rule 21F, Enforcement and OWB policies and procedures, and OWB's FY 2021 Risk and Control Matrix to identify and test key control activities. We reviewed control activities for the processing of whistleblower claims and tested related processes in our claims package sample testing. We obtained access to OWB's Claims Tracker system and the modernized claims tracking system, and performed system walkthroughs with OWB, CRS, and OFM staff. Furthermore, we interviewed Enforcement and OWB management to understand the processes for ensuring that whistleblower claims are properly handled.

Information and Communication. We reviewed OWB's internal communications of its policies and procedures through recurring staff meetings and materials posted to its internal web site, which includes reference guides, job aides, and training materials. Furthermore, we assessed OWB's external communications of information through its public webpage, hotline, and annual reports.

Monitoring. We reviewed OWB internal control documentation and policies and procedures, and discussed with OWB management its roles and responsibilities for monitoring the SEC's whistleblower program.

As discussed in this report, we identified areas for potential improvement related to internal controls within the context of our objective. Namely, control activities can be improved as discussed in Findings 1, 2, and 3; information and communication can be improved as discussed in Findings 3 and 4; and monitoring controls can be improved as recommended in Finding 4. Our recommendations, if implemented, should help strengthen the SEC's whistleblower program.

Data Reliability

GAO's *Assessing Data Reliability* (GAO-20-283G, December 2019) states reliability of data means that data are applicable for audit purpose and are sufficiently complete and accurate. Data primarily pertains to information that is entered, processed, or maintained in a data system and is generally organized in, or

derived from, structured computer files. Furthermore, GAO-20-283G defines “applicability for audit purpose,” “completeness,” and “accuracy” as follows:

“Applicability for audit purpose” refers to whether the data, as collected, are valid measures of the underlying concepts being addressed in the audit’s research objectives.

“Completeness” refers to the extent that relevant data records and fields are present and sufficiently populated.

“Accuracy” refers to the extent that recorded data reflect the actual underlying information.

To address our objective, we obtained computer-processed data from OWB’s Claims Tracker system and the modernized claims tracking system. To assess the reliability of the data we:

- interviewed knowledgeable personnel, including the Claims Tracker system point of contact, OWB staff responsible for preparing data for migration to the modernized claims tracking system, OWB users of the Claims Tracker system and the modernized claims tracking system, and information technology specialists;
- obtained access to OWB’s Claims Tracker system and the modernized claims tracking system and performed system walkthroughs with OWB staff and information technology specialists;
- tested data reliability of exports from the Claims Tracker system and the modernized claims tracking system; and
- tested a sample of 29 claims packages (and associated artifacts) to determine whether applicable source information matched data in OWB’s Claims Tracker system exports.

Based on the work we performed, we found the modernized claims tracking system data sufficiently reliable for the purpose of this audit. However, as we discuss in Finding 3, we identified specific instances of inaccurate or incomplete data in OWB’s Claims Tracker system.

Prior Coverage

The SEC OIG and GAO issued the following reports of particular relevance to this audit:

SEC OIG:

- *Assessment of the SEC’s Bounty Program* (Report No. 474; March 29, 2010).
- *Evaluation of the SEC’s Whistleblower Program* (Report No. 511; January 18, 2013).

GAO:

- *Securities and Exchange Commission: Securities Whistleblower Incentives and Protections* (GAO-11-764R; June 27, 2011).

These reports can be accessed at <https://www.sec.gov/oig> (SEC OIG) and <https://www.gao.gov> (GAO).

Appendix II. The SEC's Whistleblower Award Process

As stated previously, the SEC's whistleblower award process involves two offices within Enforcement: OMI and OWB. OMI is most often associated with the TCR system and TCR triage—the review, prioritizing, and disposition of each TCR—whereas OWB administers and enforces the provisions of Section 21F of the Exchange Act. Figure 1 in the Background section of this report shows the 10 main steps of the SEC's whistleblower award process, which we describe in more detail below.

1. **Whistleblowers Submit Tips to the SEC**—The SEC's whistleblower process begins with a whistleblower submitting a tip to the SEC. To qualify for an award under the whistleblower program, individuals must complete a whistleblower declaration and submit information regarding possible securities law violations to the Commission either through the SEC's online TCR portal or by mailing/faxing a Form TCR to the SEC.
2. **Tips Analysis/Investigation**—OMI reviews all whistleblower tips submitted to the Commission that reference a possible securities law violation. OMI identifies those tips containing high-quality information that warrant the additional allocation of Commission resources. When OMI determines that a tip should be considered for investigation, it assigns the tip to one of the Commission's 11 regional offices, a specialty unit, or to an Enforcement group at the SEC's Headquarters in Washington, DC. OWB tracks whistleblower tips that are referred to Enforcement staff for investigation.
3. **Cases Filed/Penalties Ordered**—The SEC orders monetary sanctions as a result of successful enforcement actions brought with information from meritorious whistleblowers.
4. **Notices of Covered Actions Posted**—OWB posts a NoCA on its webpage for every Commission enforcement action that results in monetary sanctions of more than \$1 million.
5. **Whistleblowers File Claims**—Those individuals who have submitted whistleblower tips pursuant to the whistleblower program's requirements and whose information significantly advanced the particular investigation that led to the covered action may submit a claim application in response to a posted NoCA. Claimants have 90 calendar days to apply for an award by submitting to OWB a completed award application on Form WB-APP.⁵⁰
6. **Review/Analysis of Claims**—For every claim, OWB attorneys assess the application and the eligibility of the claimant and confer with relevant investigative or other Commission staff to understand the contribution of the claimant, if any, to the success of the covered action. Using the information and materials provided by the claimant in support of the application, as well as other relevant materials reviewed, OWB attorneys prepare a recommendation to the CRS as to

⁵⁰ 17 C.F.R. § 240.21F-10(a).

whether the claimant meets the criteria for receiving an award, and if so, the recommended amount of the award.

7. **Preliminary Determinations Issued**—The CRS (as of December 2022, composed of six senior officers in Enforcement, including the Division Director) considers OWB’s recommendation on the award application, then issues a Preliminary Determination⁵¹ setting forth its assessment of whether the claim should be approved or denied and, if approved, setting forth the proposed award amount.
8. **Possible Record and Reconsideration Requests**—A claimant may submit a written request within 30 calendar days of the date of the Preliminary Determination asking for a copy of the record that formed the basis of the CRS’s decision as to the claim for award. Claimants may seek reconsideration of the Preliminary Determination by submitting a written response to OWB within 60 calendar days of the later of (i) the date of the Preliminary Determination, or (ii) if the record was requested, the date when OWB made the record available for a claimant’s review.
9. **Additional Analysis**—As applicable, OWB attorneys evaluate requests for reconsideration and analyze claimants’ legal arguments before recommending a Proposed Final Determination for the CRS to submit to the Commission.
10. **Final Orders Issued/Resolution of Appeals**—After considering any requests for reconsideration, the CRS makes a Proposed Final Determination, and the matter is submitted to the Commission for its decision. All Preliminary Determinations of the CRS that involve granting an award are submitted to the Commission for consideration as Proposed Final Determinations irrespective of whether the claimant objected to the Preliminary Determination. Within 30 days of receiving the Proposed Final Determination, any Commissioner may request that the Proposed Final Determination be further reviewed by the Commission. If no Commissioner requests such a review within the 30-day period, then the Proposed Final Determination becomes the Final Order of the Commission. Claimants who are issued a denial have a right to appeal the Commission’s Final Order within 30 days of issuance to the United States Court of Appeals for the District of Columbia Circuit, or to the circuit where the claimant resides or has their principal place of business.

⁵¹ As part of the Rule 21F amendments that became effective December 7, 2020, the Commission is provided an opportunity to review CRS’ Preliminary Determinations, but does not approve the Preliminary Determinations, before they are issued to the claimants.

Appendix III. Management Comments

MEMORANDUM

TO: Rebecca L. Sharek, Deputy Inspector General for Audits, Evaluations, and Special Projects, Office of Inspector General

FROM: Gurbir S. Grewal, Director, Division of Enforcement

RE: Management Response to *SEC's Whistleblower Program: Additional Actions Are Needed To Better Prepare for Future Program Growth, Increase Efficiencies, and Enhance Program Management*

DATE: December 13, 2022

Grewal,
Gurbir

Digitally signed by
Grewal, Gurbir
Date: 2022.12.13
11:05:07 -05'00'

I. Introduction

The Division of Enforcement (“Enforcement” or the “Division”) submits this memorandum in response to the report of the Office of Inspector General (“OIG”) entitled *SEC's Whistleblower Program: Additional Actions Are Needed To Better Prepare for Future Program Growth, Increase Efficiencies, and Enhance Program Management* (“Report”). We appreciate the opportunity to respond to the Report.

The Report included eight recommendations for the Office of the Whistleblower (“OWB”), an office within Enforcement. You requested that our response should indicate concurrence or non-concurrence with each recommendation contained in the Report. As described more fully below, we are in concurrence with the eight recommendations in the Report.

II. Recommendations Related to Efforts to Improve Whistleblower Claims Processing and Tracking Procedures to Increase Efficiencies and Better Prepare for Whistleblower Program Growth

Recommendation 1: *To further increase efficiencies and better prepare for future growth in the whistleblower program, we recommend that the Office of the Whistleblower take steps to improve follow-up processes related to developing initial drafts of attorney declarations including defining intervals for follow-up and procedures for consistently tracking follow-up communications with declarants.*

Enforcement concurs with this recommendation. The SEC’s whistleblower program has increased substantially since its inception. In FY21, the SEC awarded approximately \$564 million to 108 individuals, and received over 12,200 whistleblower tips. In an effort to address program growth, OWB implemented the declaration initiative across the Division in May 2019.

This has created significant efficiencies in the development of initial drafts of attorney declarations that are needed to support claim recommendations. The implementation of this initiative dramatically reduced claims processing times. Currently, OWB requests investigative staff to prepare declarations using a template designed to elicit the information necessary to assess the award claim. If the draft declaration is not received within 30 days, OWB personnel contact declarants to remind them of the outstanding draft declaration and/or determine whether there are any issues or questions preventing declarants from preparing the draft declaration.

In January 2022, OWB implemented a new technology system to modernize, standardize, and automate the tracking and management of whistleblower program information (modernized claim tracking system). OWB is currently leveraging the modernized claim tracking system to better track the sending and receipt of declaration to/from Enforcement. OWB is currently in the process of updating policies and procedures to provide for more consistent and periodic follow-up on outstanding declarations.

Recommendation 2: *To further increase efficiencies and better prepare for future growth in the whistleblower program, we recommend that the Office of the Whistleblower develop and define in policies and procedures alerts and status reports generated within the modernized claims tracking system for tracking key steps throughout the whistleblower claims process.*

Enforcement concurs with this recommendation. As the Report acknowledges, for most of the whistleblower program's existence, the SEC did not prioritize a technology system to assist OWB in streamlining and tracking daily work flow, which presented challenges with reporting on key steps in the claims process in a timely and efficient manner. In January 2022, OWB implemented a modernized technology solution to efficiently and effectively administer the SEC's whistleblower program. This technology solution is a workflow system with claims queues that track each step in the claims process and the capability to generate automatic reports in an ongoing and consistent basis that track key steps through the claims process. OWB will also update policies and procedures related to claims processing to reflect the integration of the modernized claim tracking system.

III. Recommendation Related to an Operating Agreement Governing the CRS and its Actions and Decisions

Recommendation 3: *To improve controls over Claims Review Staff actions and decisions and reduce risk to the whistleblower program, we recommend that the Claims Review Staff, in coordination with the Office of the Whistleblower develop an operating agreement (or charter) that includes rules and standards for the Claims Review Staff.*

Enforcement concurs with this recommendation. Consistent with the Exchange Act, the Director of Enforcement will develop, and update as needed, standard operating practices and procedures to guide the evaluation of award claims by the Claims Review Staff.

IV. Recommendations Related to Improving Controls Over Data Reliability to Enhance Whistleblower Program Management and Reporting

Recommendation 4: *To improve controls over data contained in its modernized claims tracking system and enhance whistleblower program management and reporting, we recommend that the Office of the Whistleblower implement a process to independently validate that data manually entered into the modernized claims tracking system are accurate and match source documents, where available.*

Enforcement concurs with this recommendation. OWB implemented a modernized, sophisticated technology system in January 2022 that is capable of tracking key metrics in the claims process. OWB has also begun conducting regular, periodic testing to ensure the accuracy of data that was migrated from the predecessor system and entered into the modernized claims tracking system. The system is capable of running regular, automated reports to ensure that OWB staff is accurately updating the status of claims on a regular basis. The system also includes inherent checks such that certain key data fields, like Final Order and Preliminary Determination dates, cannot be in conflict and requires that certain required documents be uploaded to the system. OWB will develop additional internal controls for the periodic testing of claims data in the modernized claims tracking system. Additional staff resources in OWB will be required to ensure complete and accurate data in the claims tracking system, and to regularly test the data.

Recommendation 5: *To improve controls over data contained in its modernized claims tracking system and enhance whistleblower program management and reporting, we recommend that the Office of the Whistleblower develop and document policies and procedures to ensure completeness of data in the modernized claims tracking system.*

Enforcement concurs with this recommendation. Currently, OWB regularly reports on certain key metrics related to the claims process through the modernized claims tracking system, and will update its policies and procedures to ensure that data is entered into the system and regularly reviewed for accuracy. As noted above, to ensure complete and accurate data in the claims tracking system, and to develop controls and testing around the data in policies and procedures, additional staff resources in OWB will be required.

V. Recommendations Related to OWB's Effective Communication with External Parties

Recommendation 6: *To further improve controls for communicating with external parties, we recommend that the Office of the Whistleblower update the Whistleblower Public Hotline – Phone Call Policies and Procedures to account for documenting exceptions to the 24-business-hour rule.*

Enforcement concurs with this recommendation. OWB implemented the Whistleblower Public Hotline in May 2011, and since that time OWB has returned over 30,000 calls to respond to questions from members of the public about the SEC's whistleblower program. The

Whistleblower Public Hotline is a vital part of the SEC's whistleblower program, as it establishes a line of communication between OWB and whistleblowers, would-be whistleblowers, their counsel, and other members of the public. There may be a number of reasons why OWB is not able to return a phone call within 24 business hours, including calls received internationally (and potentially requiring a language translator) or from individuals on the alternative response listing. OWB is currently updating its policies and procedures to document the exceptions to the 24-business hour rule.

Recommendation 7: *To further improve controls for communicating with external parties, we recommend that the Office of the Whistleblower establish monitoring controls to ensure that, in accordance with existing Office of the Whistleblower policy, all helpful whistleblowers are timely and consistently notified of Notice of Covered Action postings.*

Enforcement concurs with this recommendation. On the last business day of each month, OWB posts Notices of Covered Actions ("NoCA") on its website. Each NoCA includes the deadline for submitting award applications for that NoCA. The NoCA posting provides claimants with constructive notice of the award application deadline. The SEC "is not obligated to notify a claimant of the posting of a NoCA or the deadline for submitting an award application." *Order Determining Whistleblower Award Claim*, Release No., 95711 (Sep. 9, 2022). While it is the claimant's ultimate responsibility to timely submit whistleblower award applications, OWB strives to notify whistleblowers identified by Enforcement staff as helpful to investigations of related NoCA postings. In addition, members of the public may sign up to receive an email delivered by the subscription service GovDelivery each time the list of NoCAs on OWB's webpage is updated. OWB is currently considering how to leverage its modernized claims tracking system to better track helpful whistleblowers and monitor outreach to those individuals, and will update policies and procedures to reflect new or refined processes.

Recommendation 8: *To further improve controls for communicating with external parties, we recommend that the Office of the Whistleblower update policies and procedures to establish required timeframes for publicly posting the Commission's Final Orders.*

Enforcement concurs with this recommendation. All awards and contested denials are reviewed and approved by the Commission, which issues a Final Order either granting or denying the whistleblower award claim. These Final Orders are processed through a specific internal SEC system and are posted to the SEC's website by a group outside of OWB on the same day that they are issued by the Commission. Preliminary Determinations issued by the Claims Review Staff recommending that the claimant's award claim be denied become final through operation of law if they are not contested by the claimant within 60 days of the Preliminary Determination or within 60 days of receiving the record, if requested. OWB is responsible for posting the Final Orders through operation of law on its website. Communicating Final Orders to the public, whether issued by the Commission or which become final through operation of law, is important to the operation of the SEC's whistleblower award program. OWB will update its policies and procedures to reflect timeframes for the posting of the Final Orders.

Major Contributors to the Report

Kelli Brown-Barnes, Audit Manager

Michael Burger, Auditor

Nicholas Napolitano, Auditor

Douglas Carney, Auditor

Leann Harrier, Assistant Counsel to the Inspector General

Comments and Suggestions

If you wish to comment on the quality or usefulness of this report or suggest ideas for future audits, evaluations, or reviews, please send an e-mail to OIG Audit Planning at AUDplanning@sec.gov.

Comments and requests can also be mailed to the attention of the Deputy Inspector General for Audits, Evaluations, and Special Projects at the address listed below.

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