NWC | NATIONAL WHISTLEBLOWER CENTER

March 7, 2025

Memorandum

From: National Whistleblower Center

To: Department of Government Efficiency

RE: Tax Whistleblower Program – Opportunities For Improvements

Please see below the suggested reforms that the NWC believes will improve and enhance the IRS Whistleblower Office (WBO) and whistleblower award program – and also greatly improve the efficiency of the IRS to the benefit of honest taxpayers. These reforms build on the efforts to update and improve the WBO and the whistleblower program that were first put forward by President Trump's previous IRS Commissioner, Charles Rettig, and implemented by the energetic and engaged staff of the WBO. In addition to these reforms that the administration can take on its own initiative, the NWC encourages the administration to support the important statutory changes to the whistleblower program that have been put forward by Chairman Mike Crapo (R-ID) and Ranking Member Ron Wyden (D-OR) that will also strengthen and improve the program.

1) **Partner Better With Whistleblowers, Harness Whistleblower Resources To Help The IRS**

The creation of the modern IRS whistleblower law in 2006 built on the success and model of the False Claims Act (FCA). A key part of the FCA is that the government works closely and essentially partners with the whistleblower/relator and their attorneys. The attorneys (as well as specialists hired by the attorneys) often work hand-in-glove with the Department of Justice (DOJ) attorneys in pursuing a case. This partnering provides enormous benefit to the government – essentially providing the government (without cost) experienced, knowledgeable individuals to assist the government in pursuing cases for recovery of dollars. A total of over $75 billion dollars has been recovered under the FCA since the law was updated by Senator Grassley in 1986.

The IRS commonly complains that it is "out-gunned" in dealing with sophisticated taxpayers and their lawyers. The whistleblower program – modeled on the FCA leveraging of private sector resources -- is a key way that Congress intended to provide IRS the tools to help address this problem.

Unfortunately, the IRS has failed to utilize this key aspect and intent of the IRS whistleblower law – of the IRS putting to work and benefitting from the outside expertise of the lawyers and experts representing the whistleblower. Currently, the IRS receives the whistleblower information and does a review for taint, with at times some limited interaction with the whistleblower at a senior level. The IRS exam/field never talks or interacts with the whistleblower (unlike the SEC and CFTC whistleblower program that engages and works much closer with the whistleblower at the

field level). Further, the IRS has never entered into any contract allowed under Section 6103(n) that would allow the IRS to work closely with the whistleblower in an ongoing manner during an examination.

This failure to interact closely with the whistleblower means that much of the benefit and insight of the whistleblower is not realized by the IRS (there are understandably limits to how much the initial whistleblower filing can convey of a whistleblower's knowledge of an industry or company that they have worked at for years and years). Further, there have been no efforts to engage and work with the whistleblowers and harness the whistleblowers' representatives as takes place commonly in the FCA – and was intended by Congress when the 2006 amendments to the IRS whistleblower program were put into place.

Engaging closely with tax whistleblowers, their lawyers, and experts and bringing them in to assist the IRS is a key way to help address limited IRS resources and to assist the IRS in matching the defenses put forward by sophisticated taxpayers. This close working relationship between whistleblowers and the government has worked to return billions of dollars to the Treasury under the FCA at DOJ – and can do the same for tax enforcement.

Who Gets An Award?

Hand-in-hand with working closely with the whistleblower and leveraging the whistleblower's counsel and experts to assist the IRS is properly expanding what IRS administrative actions are covered (and awarded) by the whistleblower award statute (which the IRS has improperly sharply curtailed). Getting it right who is entitled to an award is critical for the success of the whistleblower award program – ensuring fair treatment encourages other whistleblowers to come forward and will expand the opportunities for the IRS to leverage whistleblower resources (as discussed above).

2) Expand Scope of Whistleblower Awards – As Intended By Statute

The current regulations and guidance improperly limit who is eligible for an award. The statute under 7623(a) and (b) gives the IRS wide authority to award whistleblowers. By limiting the range and scope of awards, the government is effectively discouraging whistleblowers from coming forward and cutting off valuable information.

Section 7623(b) provided for an award to a tax whistleblower when the IRS takes "any administrative action" based on a whistleblower's information that resulted in collected proceeds. The statute was written broadly with the intent to capture all ways that the IRS can or may respond with information provided by a whistleblower – including a notice, guidance, letters, reporting requirements, compliance initiative programs, etc. – beyond just through an examination or audit of a specific taxpayer.

However, the Treasury regulations provided a narrow limitation of "any administrative action" to be essentially only a specific action against a specific taxpayer – ignoring the myriad of ways by which IRS addresses tax evasion – tax evasion brought to their attention by a whistleblower.

The answer to Treasury's improper narrowing of the statute is twofold: a) revisit the definition of "any administrative action" and b) return to the traditional flexibility for awards that the IRS can make under the discretionary award program under 7623(a).

The IRS whistleblower program dates to 1867 and was a discretionary award program that provided the IRS enormous flexibility of when to award a whistleblower for information provided to the IRS. In sum, if the IRS found that the information assisted their enforcement efforts, the IRS could provide an award. With the creation of the mandatory award program under 7623(b) – the IRS through the IRM eliminated this powerful flexible tool of the discretionary award program – and rewrote 7623(a) as a mirror of the 7623(b) award program – for those whistleblowers coming forward with information about tax losses under $2 million in tax (which are not covered by the 7623(b) mandatory program).

There is nothing in the statute or legislative history that supports such a finding and decision that Congress intended to eliminate the highly flexible discretionary award program that had long-existed under Section 7623(a).

In limiting 7623(a) the Treasury and IRS eliminated a significant number of whistleblowers who had traditionally could receive an award under 7623(a) – specifically the regulations denied an award to: 1) those whistleblowers who provided information that assisted the IRS in enforcement of the tax laws – where the information was used by the IRS to assist their enforcement work in something other than an audit or examination of a specific taxpayer named by the whistleblower (ex. a notice, issuance of letters, change in reporting or forms, etc.); 2) those whistleblowers who provided information to the IRS that was used in examination or audit involving over $2 million dollars in tax – but the whistleblower's assistance was not substantial (discussed in detail below); 3) barring as whistleblowers under a broadly defined "taxpayer representative" – far beyond a "taxpayer representative" as defined in IRS guidance.

For example, one whistleblower provided the IRS a detailed legal analysis exposing the problem and also how to address and audit an arcane tax law. The IRS was unaware of this activity and the IRS Counsel's office wholly incorporated the whistleblower's analysis in its own guidance to the field on auditing this issue – resulting in tens of millions of dollars being recovered. Yet, the IRS did not provide an award to the whistleblower for the results of those examinations that were based on the whistleblower's detailed legal analysis.

In sum, the Treasury Regulations- in response to the 2006 amendments, which are widely recognized as intending to strengthen and expand the whistleblower award program – the Treasury Regulations actually curtailed and limited the numbers of whistleblowers that can receive an award. The Treasury Regulations, by limiting the awards to whistleblowers, effectively discourage whistleblowers from coming forward with information and ultimately undermine the IRS's efforts to address tax evasion.

The bottom line- why would the IRS elect not to encourage and award whistleblowers who provide important information that results in the IRS addressing a tax issue through a notice, reporting requirement, letter, or other administrative means, which results in hundreds of millions of dollars being collected? A whistleblower's award should not depend on the IRS's whim of how the IRS

chooses to use the information the whistleblower has provided to address the tax matter that the whistleblower has brought to light. An examination, yes. A notice, no. That is not the right answer – the right answer is what is provided by the statute: that if the whistleblower provides information, the IRS uses that information to take "any administrative action" that results in collected proceeds – the whistleblower should receive an award.

3) Creating Bar Of "Substantial Contribution" And "Any Related Action" For Whistleblowers

As discussed above, with the passage of the 2006 amendments creating the mandatory award program, Treasury issued regulations that narrowly limited the whistleblower award program in three ways: 1) narrowly defining "any administrative action' to just examinations and audits; 2) creating a bar of "substantial contribution" for whistleblowers to be eligible for an award; and, 3) limiting who would be eligible as a whistleblower (discussed below).

Section 7623(b) as it is plainly written provides that a whistleblower gets an award if the whistleblower: 1) provides information; 2) that the secretary uses to proceed with any administrative or judicial action; and, 3) results in collected proceeds. The amount of the 7623(b) mandatory award (15-30%) ". . . shall depend upon the extent to which the individual **substantially contributed** to such action." The Treasury has inappropriately, through regulations, changed the "substantially contributed" measure for an award to a bar for qualifying for an award under 7623(b).

In addition, the Treasury Regulations by creating the mirror for the discretionary award program under 7623(a) for meeting a substantial threshold as well – for those cases under $2 million dollars in taxes has now eliminated any award for a whistleblower who has assisted and helped the IRS in its efforts to address tax evasion – but has provided assistance that doesn't rise to the IRS created "substantial contribution" test.

Treasury's curtailing and limiting of awards to whistleblowers by creating a test of "substantially contributes" goes directly against the long-time practice of the IRS before the 2006 amendments.

Under the IRM 25.2.2.5 in effect at the time of the 2006 amendments – the IRS provided not a full award for: "specific and responsible information that caused the investigation and resulted in the recovery**, or was a direct factor in the recovery**" as well as a lesser award "For information that caused the investigation and was of value in the determination of tax liabilities although not specific . . . " or "For information that causes the investigation, but had no direct relationship to the determination of tax liabilities. . . . " In sum, the IRS administered 7623(a) with broad authority to provide awards to whistleblowers who had provided information- information that was markedly below a 'substantially contributed" test.

In response to the 2006 amendments – designed to strengthen and improve the whistleblower award program – Treasury/IRS through the regulations and IRM wrote off a high number of whistleblowers from receiving any award – under both 7623(b) with the regulations and 7623(a) – through the IRM which limited the awards to those under $2 million and also imposed the "substantially contributed" test created by Treasury. Thus, whistleblowers that previously would

have received an award before the 2006 amendments are now denied an award. The failure to award whistleblowers who have assisted the IRS, who have identified tax evaders, and who have provided value to the IRS in its works only serves to undermine the whistleblower program and discourage whistleblowers from coming forward. The IRS should put in place polices that award all whistleblowers who identify tax evaders, who assist the IRS, and bring value to the IRS – and not impose arbitrary barriers and bars to awards.

Such a policy of providing threshold awards to whistleblowers – even where the benefit of the whistleblower's information is ultimately limited to identifying someone who engaged in tax evasion will be significant, especially for honest taxpayers. The previous administration recently put forward an examination project that focused on wealthy individuals. In short, the Treasury Inspector General for Tax Administration (TIGTA) found that the effort was a bust. Why? Because the vast number of examinations ended in "no-change" of the taxpayer. This meant not only that limited IRS exam resources were wasted on audits that accomplished nothing – as critical, the failure to identify taxpayers who were evading taxes meant that honest taxpayers were needlessly subject to the grind of an audit. The benefit of identifying taxpayers that should be audited (and that led to successful audits and collections) is significant for the IRS (and for honest taxpayers) – and whistleblowers should be considered for some award in such cases (and were historically provided such awards).

Any Related Action

This narrow reading of the whistleblower law is especially pernicious regarding "any related action." The whistleblower statute allows for an award to the whistleblower for "any related action" caused by the information provided. However, the regulations and IRS interpretation essentially limit "any related action" to only other taxpayers—not to related actions as to a taxpayer. For example, the whistleblower discloses information that taxpayer A is engaged in Z transaction. If the IRS audits taxpayer A (thanks to the whistleblower) and instead focuses on the Y transaction by taxpayer A – and the Y transaction is related to the Z transaction – the IRS will seek to deny an award to the whistleblower.

Under 7623(a), the administration certainly has the authority to issue discretionary awards where the "substantially contributed" test has not been met. The administration also has the authority to properly define "any related action" under 7623(b) to encompass all related actions as to a taxpayer. The administration needs to broadly look to award those whistleblowers that have assisted the IRS in its work – instead of finding hair splitting rationales to deny whistleblowers an award. The overall impact of the IRS on these improper readings of the statute is to discourage whistleblowers from coming forward – and diminishing the full potential of the whistleblower program.

4) **Improperly Limiting Who Can Be A Whistleblower**

The cornerstone of the IRS whistleblower award program was to encourage informed, knowledgeable insiders to come forward with information about tax evasion by wealthy individuals and large corporations. The IRS has put forward policy goals that essentially seek to

bar such informed knowledgeable insiders from even coming forward and the IRS considering their information.

Historically, the only limitation on who can be a whistleblower and receive an award under the IRS tax whistleblower award program are government officials – particularly IRS/Treasury employees. The 2006 amendments also made clear that an individual that both planned and initiated actions that led to the underpayment of tax could have his award reduced and that an individual who was criminally convicted for his role in such an action would be denied an award.

The IRS in the IRM has created its own limitation of who can be a whistleblower – an individual who is a "taxpayer representative." The narrow limitation of "taxpayer representative" to individuals named as the power of attorney Form 2848 for that specific matter/tax year is understandable given the right to effective counsel. Unfortunately, the IRS in practice has expanded its prohibition far beyond that narrow term – rejecting first-rate whistleblower filings provided by knowledgeable and informed insiders who are giving the IRS a roadmap to billions of dollars in tax evasion – tax evasion that will never be uncovered but for the whistleblower.

The IRS chief counsel notices – CC-2010-004 (updating CC-2008-011) clearly envision that current employees of a taxpayer can be whistleblowers – limiting the IRS to being a passive recipient – but certainly allowing "A current employee informant may submit additional information to the IRS following the initial submission." In short, while a current employee requires special handling to avoid concerns of the whistleblower being an "agent" of the government, information can be received and used by the IRS from a current employee. The working relationship with the whistleblower and the IRS in this case has certainly complied with those requirements laid out in the counsel memos.

Both counsel memos then discuss informants who have been designated as current representatives of the taxpayer. The memos provide a bar to the taxpayer representative being an informant (and the IRS using the information) – this for taxpayer's representatives for any administrative or litigation matter pending before the IRS/courts. However, there is nothing in either memorandum to suggest that the definition of "taxpayer representative" is anything other than that provided in the IRM – that a "taxpayer representative" is identified by the taxpayer in a Form 2848 – power of attorney.

The IRM makes clear at 601.502(a) that a recognized representative is an individual who meets two requirements: (a)(1)"appointed as an attorney-in-fact under a power of attorney" . . . and (a)(2) – meeting certain categories (including attorney, full-time employee, etc.).

In sum, the chief counsel notices clearly allow for current employees to be a whistleblower. The only exception are those individuals (who may or may not be an employee) who are designated as "taxpayer representatives." Taxpayer representatives are defined in the IRM as those individuals who receive a power of attorney (Form 2848) from the taxpayer that is provided to the IRS (and also meet the category requirements of 601.502(a)(2)).

It is widely recognized that the IRS benefits from informed, knowledgeable insiders. Yet, the IRS in a recent modification to the IRM at 25.2.2.3 states that the requirement of a Form 211 to submit

information under penalty of perjury precludes submissions by: 1) a person serving as a representative of the claimant; 2) a person otherwise acting on behalf of the claimant; or 3) an entity other than a natural person. The 2006 statutory requirement for a filing to be made under penalty of perjury was done to ensure the seriousness of purpose of filing a Form 211 and the consequences of false statements – not to serve as a means of barring individuals from blowing the whistle.

Particularly disturbing is that the IRM gives no indication of confirming that a representative of the claimant is limited to the Form 2848 signatures. In addition, the vague "a person otherwise acting on behalf of the claimant" – is wholly undefined. Further, this creation of a new category – "person otherwise acting . . . " – was never even contemplated by the IRS itself in providing guidance on the 2006 amendments – See Notice 2008-4 (3.02(9)). Further, in IRM 25.2.1.4.3.2 – makes clear that the prohibition on communication is for someone that is the "taxpayer's representative" in any proceeding . However, again in practice, the IRS has taken a vague and expansive definition of "taxpayer representative" – far beyond the historical understanding of the taxpayer representative identified under a Form 2848.

The IRS needs to get out of its own way in barring the most desired whistleblowers – informed and knowledgeable insiders – from coming forward. This overly broad policy of "taxpayer representative" needs to be markedly modified.

5) Director of Whistleblower Office's Role In Making Award Determination – Not Counsel

When Section 7623 was modernized in 2006, it also created the Whistleblower Office and established the role of Director of the Whistleblower Office to oversee and make award decisions. The IRM is clear: "The authority to approve and determine awards under IRC 7623 for individuals . . . is delegated to the Director of the Whistleblower Office under Delegation Order 25-7(Rev 5). IRM 25.2.2.1.3

The regulations underscore the singular role of the Whistleblower Office in making awards, stating that it is the whistleblower that shall "determine and pay awards". 3017623-3(a). However, in practice, time and again, the Office of Chief Counsel is improperly asserting itself into award decisions – and seeking to dictate whether an award will be made to a whistleblower.

The NWC encourages consideration be given also to providing the Whistleblower Office its own attorneys that report to the Director of the Whistleblower Office (similar to the separate attorneys that work and report to the Taxpayer Advocate and the Treasury Inspector General for Tax Administration). In addition, whoever the administration names as Chief Counsel should fully embrace the whistleblower program and ensure the whistleblower program meets its full potential.

Reforms To Improve Administration Of Whistleblower Award Program – Prompt Payment of Awards As Well As Fair And Equitable Treatment

In general, nothing encourages whistleblowers to come forward than seeing other whistleblowers receive an award. Such awards also serve to focus the minds of those considering engaging in tax evasion. Issuing awards is not only mandated by the statute – awards are also critical to the success

of the program. The key is that whistleblowers see and perceive that the making of awards is done as promptly as possible – but also that awards are made fairly and equitably.

6) Partial Awards/Disaggregation

Historically a significant problem of issuing awards has been that the IRS has limited itself by imposing rules requiring that all actions and all dollars must be completed and collected before an award can be made. The reality is that this has often meant whistleblowers commonly waiting a decade or more for an award.

To its credit, the WBO recently issued guidance that will make it easier in some cases to "disaggregate" an award and provide a partial award. The difficulty has been that the IRS is still looking at how to administratively implement this guidance – so no awards to date have been issued under this new allowance for disaggregation. Tens of millions of awards are being held up. The DOGE should ensure that it is a priority that the bureaucratic hurdles to implementing this guidance are resolved quickly and the awards can move forward.

As background, the 2006 statute provides three requirements for an award to be made: 1) information provided by the whistleblower; 2) the IRS takes any action based on that information; and, 3) the results are collected proceeds. Collected proceeds have been defined in the regulations as when the dollars have been collected and all rights to appeal by the taxpayer have been terminated.

There are not uncommon situations where the whistleblower has brought forward information about a major corporation engaged in underpayment of tax and the IRS will review that matter for open years under audit – ex. 2015, 2016, and 2017 – a cycle under audit. In practice, the issue brought forward by the whistleblower may then be reviewed in the next cycle of audit – ex. 2018, 2019 and 2020.

The long-time practice of the IRS whistleblower office has been to NOT pay the whistleblower an award for the years 2015, 2016, and 2017 even though those years are closed, all payments have been made by the taxpayer, and there are no rights to appeal for the taxpayer. Instead, the whistleblower office will state that it will wait until the next audit cycle (containing the same issue but not affecting the previous tax years) is completed. Thus, the whistleblower can wait five or six more years waiting for the next audit cycle to be completed, payment made, and rights for appeal ended. Thus, a whistleblower can easily wait 10 – 12 years (or even longer if the IRS continues to raise the issue in future audit cycles) for an award payment.

As another example, there are cases where one matter has been resolved as to the taxpayer -- settled and paid (for example, a criminal charge) -- while an unrelated civil matter continues (for years). No award payment until the civil matter has been settled as well – had been until recently the policy of the Whistleblower Office.

Similarly, the WBO will issue a Preliminary Award Recommendation Letter (PARL) – where the whistleblower is eligible for payment immediately for one set of claim numbers (taxpayers) but another is delayed. The WBO has refused to simply retract the initial PARL and reissue two separate PARL's – one for the immediate payment and one for the delayed claim – so that an award

can be made. That such an easy, commonsense solution is readily available (issue two PARLs) but not taken – calls out for the DOGE to review and reform.

As stated, the WBO, to the credit of staff and managers, has recently put forward a new policy on disaggregation, and the NWC commends them for that effort. However, in implementing that policy, the NWC understands and is concerned about delay, and the NWC views that the DOGE could assist in the implementation of this new policy in a timely manner. Further, Treasury and the IRS leadership should reinforce the importance of disaggregation of awards as well as separate PARLs and making a priority of addressing these mechanical issues so that awards can finally be made should be a priority.

In sum, the IRS, the WBO, and the Chief Counsel's office in particular must embrace an outlook of finding "yes" to awards promptly – even if partial, disaggregated awards or requiring separate PARLs – and implementing the new policy for such awards in a timely manner.

7) Provide Fair And Equitable Treatment For All Mandatory and Discretionary Awards Where the Whistleblower Substantially Contributed

IRS, through guidance put forward (but without notice and comment in violation of the APA) has created a multi-tiered system for awards with some awards capped and the other awards uncapped depending on when the whistleblower filed. This guidance of capping some awards goes against the administration's policy goals and directly against President Trump's calls for supporting merit. The policy of capping some tax whistleblower awards should be eliminated, and all awards should be treated fairly and equitably.

The IRS has provided through the Internal Revenue Manual that mandatory and discretionary tax whistleblower awards will be provided the same percentage (15-30%). IRM 25.2.2.6.4. The long-time practice of the whistleblower program has been that whistleblowers should be awarded based on the award *policies in place at the time of an award being made* – NOT the policy at the time the whistleblower filed.

However, the IRS, through guidance, has severely limited the percentage and amount of a discretionary award that will be made for applications that are still pending in cases where the application was made before December 20, 2006 (date of enactment of the reforms). The guidance put forward in the IRM creates a rube-goldberg formula that provides that pre-2006 filings are subject to multiple different caps -- $100,000, $2 million or $10 million depending on when the whistleblower first provided the IRS information.

This arbitrary policy of limiting and capping awards for this subset of pre-2006 discretionary award applications was enacted without notice and comment under the APA and has no support in the statute.

The IRS should be consistent and fair in its application of its policies – and pre-2006 applications whose cases are still pending should be eligible for the same awards as every other applicant whose case is pending. The IRS embracing a policy of treating pre-2006 applications the same as all other whistleblower applications is especially appropriate given that these whistleblowers have

been waiting roughly 20 years for the IRS to finally make a payment of an award (with no interest running even though the government has already collected the funds years ago).

As a general note, the Trump administration has put forward its support for the government to make decisions based on merit in a number of recent Executive Orders – "Ending Illegal Discrimination and Restoring Merit-Based Opportunity." – EO 14173 (January 21, 2025). This EO states, as a general policy of President Trump wishes to ensure fair treatment for Americans based on "hard work, excellence and individual achievement." While not directly on point, the general policy that decisions should be made on merit and not arbitrary justifications is applicable to this matter of awards. Here, a subgroup of whistleblowers is being denied the proper award they would get if it were based on the merit of their information. Instead, these whistleblowers are having their awards capped based on an arbitrary bureaucratic rule that says all pre-2006 whistleblowers will be capped as to their award regardless of merit. All shall be treated the same – hardly a merit-based system.

Under the IRS' guidance of cutting down all the tall poppies – all pre-2006 whistleblowers are capped as to their award – whether the whistleblower was critical in providing the IRS information that recovered $1 billion dollars or the whistleblower was of some help in recovering $5 million – the two whistleblowers get the same award under this nonsensical, nonmeritorious guidance establishing a cap for pre-2006 whistleblowers. The DOGE can take steps to repeal this irrational -- policy that discourages whistleblowers and harms the whistleblower program. Eliminating this guidance of caps will meet the goals recently stated by President Trump: "We are going to be a nation based on merit again." Whistleblower awards should be measured on the merit of what the whistleblower provided – not an arbitrary cap based on when the whistleblower provided the information.

8) Eliminate Arbitrary and Capricious Cap of Awards That Goes Against Regulations

The IRS – through the Internal Revenue Manual – imposed a cap of $100,000, $2 million or $10 million dollars on whistleblowers who came forward in 2006 or earlier (the cap amount based on when the whistleblower filed). There is no cap on awards for whistleblowers who came forward after 2006. A policy of the IRS essentially punishing whistleblowers who came forward earlier about tax evasion – by capping their awards – makes no sense and undermines significantly the award program. Not only is such a policy against the goals of the whistleblower program and the administration's embrace of merit as a guiding principle – the cap policy is also directly against President Trump's earlier executive orders that rights of individuals should not be limited through guidance that has not been subject to the rules of notice and comment under the APA.

This cap – created in agency guidance that was not subject to notice and comment under the APA – goes directly against the regulations for the 7623(a) program, which provide for an individualized review based on the whistleblower's contribution. Further, the idea of a cap on tax whistleblower awards was rejected by Congress shortly after the whistleblower program was first put in place in the 1860s (Congress removed the cap in 1867). To be clear, the tax whistleblower statute has no language in support of a cap. No other federal whistleblower award program has a cap in place –

with most recently the SEC rejecting the idea of a cap considered during the Trump administration (with Congress strongly stating its opposition to a cap of awards).

Moreover, the cap of awards should be especially offensive to the Trump administration given that it was put in place through guidance documents – and not through the Administrative Procedures Act (and in violation of the APA). President Trump has previously issued executive orders on October 9, 2019 – EO 13891 "Promoting the Rule of Law Through Improved Agency Guidance Documents" and EO 13892 "Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication."

The general policy view of these executive orders by President Trump is that agencies cannot use manuals and other guidance to impose burdens, requirements, or restrictions on individuals. Agencies must follow the APA and issue regulations. "Agencies may impose legally binding requirements on the public only through regulations. . . . " Here, the IRS has imposed a massive cost penalty on whistleblowers by imposing through agency guidance a cap on awards – a cap that is directly against the regulations and not supported by the statute. A cap that is imposed without going through the notice and comment required by regulation.

The administration should withdraw this arbitrary and capricious cap on awards imposed by agency guidance – contrary to the general policies of President Trump's Executive Orders that guidance should not be used to affect the rights of individuals. The administration should allow whistleblowers to receive the full award to which they are entitled – awards that reflect the merit of the individual whistleblower's information and the full benefit and value the whistleblowers have provided to the country.

9) Ensure Whistleblower Cases Are Worked

As highlighted in the cover letter, the IRS Whistleblower Program is an essential tool that delivers exceptional value by identifying tax non-compliance while making efficient use of limited resources. It is critical that whistleblower cases are thoroughly investigated to ensure that valuable leads are not overlooked. However, we are concerned that strong whistleblower cases are sometimes disregarded simply because they do not fit neatly within the pre-established audit plans. We strongly urge the implementation of awards and incentives to encourage IRS examiners and managers to prioritize and actively work whistleblowers, especially as it relates to waste, fraud, and tax abuse.

Additionally, we are particularly concerned that whistleblower cases involving high-net-worth or influential individuals may not always receive the necessary attention and full investigative support. It is imperative that the IRS take steps to demonstrate to the American public that all taxpayers are treated fairly, regardless of their wealth or status, and that credible whistleblower claims are pursued with diligence and impartiality.

Lastly, we would encourage the integration of AI and advanced analytics into the IRS Whistleblower Program, as it would greatly enhance the program's effectiveness by enabling faster and more accurate analysis of whistleblower submissions. By connecting directly to IRS databases, these technologies could identify patterns, flag high-risk cases, and cross-reference

information with existing taxpayer data, ensuring that credible leads are prioritized and investigated more efficiently. NOTE: This work will benefit from the fact that – again thanks to the reforms first put forward by Commissioner Rettig (appointed by President Trump) – the WBO to the credit of its leadership and staff have made strides in improving the forms whistleblowers must file (including increased electronic filing) so that the IRS can more easily identify those whistleblower filings that are in concert with examination priorities and should be worked.

10) Pardon Whistleblowers

The administration should give strong consideration to commuting or pardoning tax whistleblowers who have come forward and provided service and benefit to the nation. While rare for whistleblowers to be subject to criminal action by the government – unfortunately it does happen.

The prosecution of whistleblowers – while rare - has had significant chilling effect, discouraging other from coming forward. Granting pardons to whistleblowers would go a long way in encouraging future disclosures. Foremost, would be for the President to consider a pardon for Mr. Brad Birkenfeld – the UBS whistleblower who literally broke open the Swiss banks and those evading taxes. Thanks to Mr. Birkenfeld, the government received billions of dollars in tax dollars.

The NWC is aware of a small number of whistleblowers who have provided significant benefit to the U.S. government that should also be considered for a pardon. The NWC is happy to share details on those individuals at your request.

11) Immigration and Cartels

The new administration's focus on immigration and combating cartel organizations highlights the critical need to disrupt the illicit financial networks that support activities. IRS Criminal Investigations (CI) is uniquely positioned to play a key role by tracing and dismantling the financial infrastructure behind these criminal organizations, uncovering money laundering schemes, and identifying tax violations linked to drug trafficking and human smuggling. By actively supporting these efforts, the IRS Whistleblower program under section 7623(c) could benefit significantly, as whistleblowers with insider knowledge of these financial crimes would be encouraged to come forward, providing valuable leads and intelligence to support CI's investigation and enhance national security.

Further, tax whistleblowers commonly have information about employers that have hired workers not legally in this country (usually the employers are not properly paying taxes on such employees). Tax whistleblowers can – and have – provided the IRS a road map to such employers. Unfortunately, all too often these cases are not worked because they have not been a priority – and viewed as politically sensitive.