

A New Tool for Fighting Corruption: Whistleblower Protections

Stephen M. Kohn
Chairman, National
Whistleblower Center
Partner, Kohn, Kohn, &
Colapinto LLP

NWCC | NATIONAL
WHISTLEBLOWER
CENTER



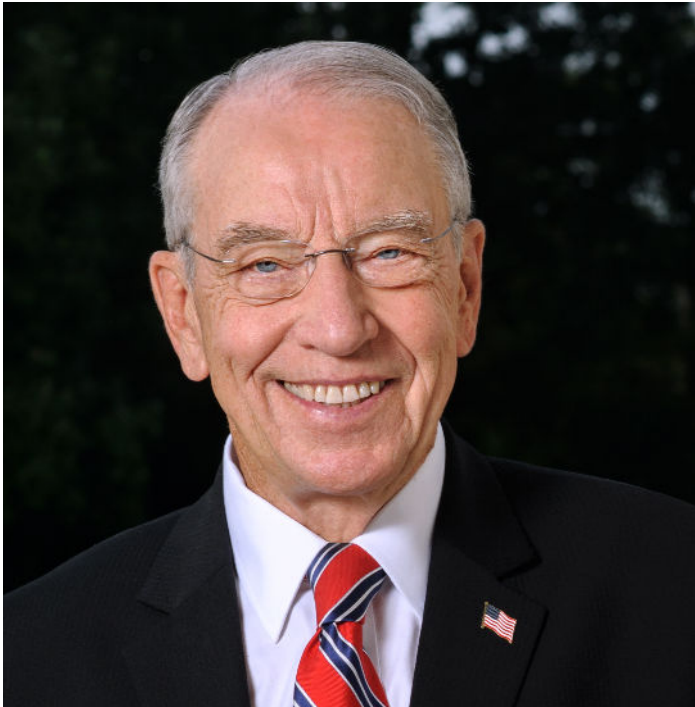
Whistleblower



- Whis*tle*blow*er (noun)
 - One whose loyalty is to the truth.
 - One who reports fraud, corruption, or violations of law to the appropriate authorities, often risking his or her job or security.
 - Acting as a confidential informant to voluntarily report violations of law

Part I - Why Whistleblowing?

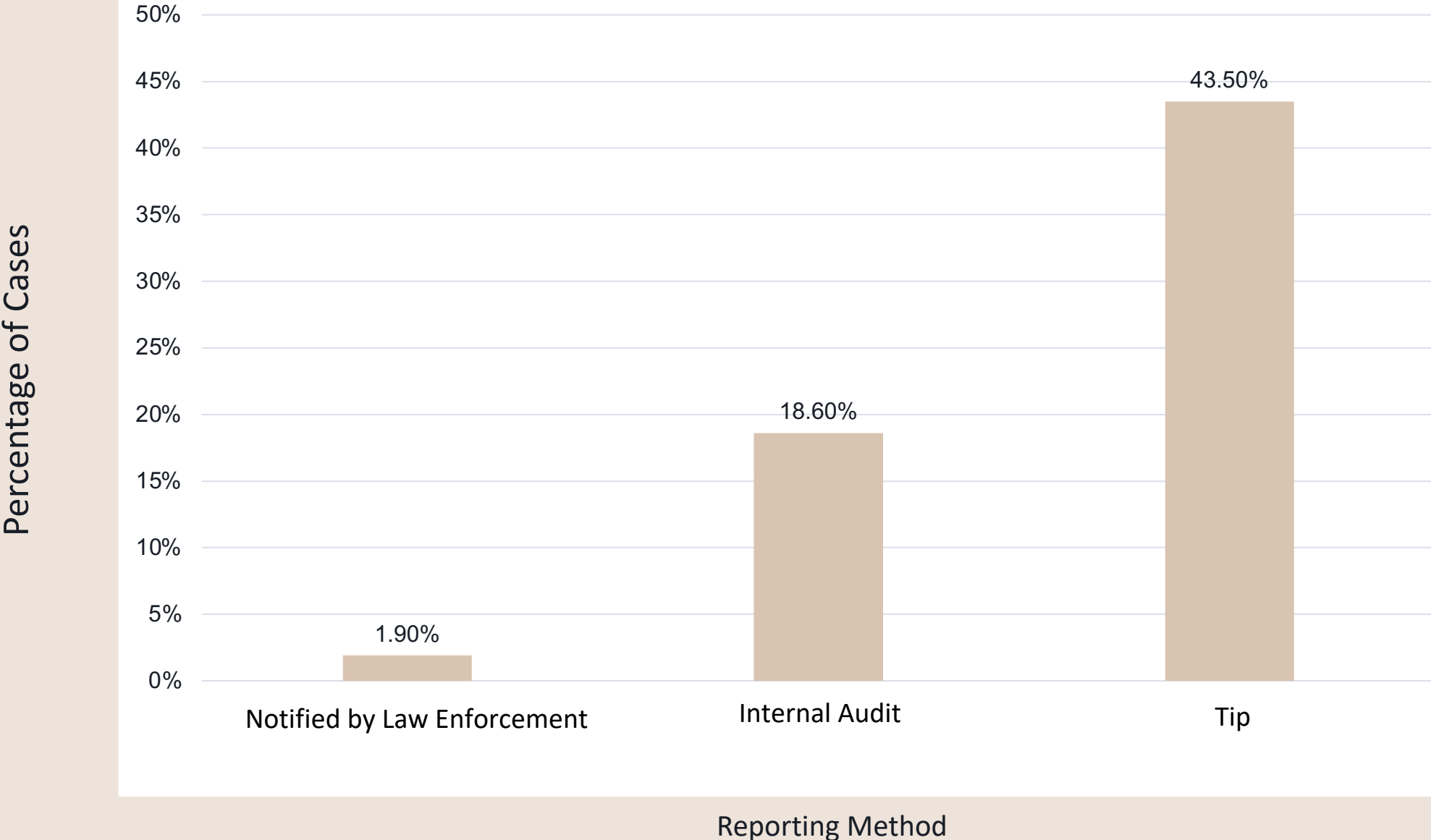




— *Senator Charles Grassley*

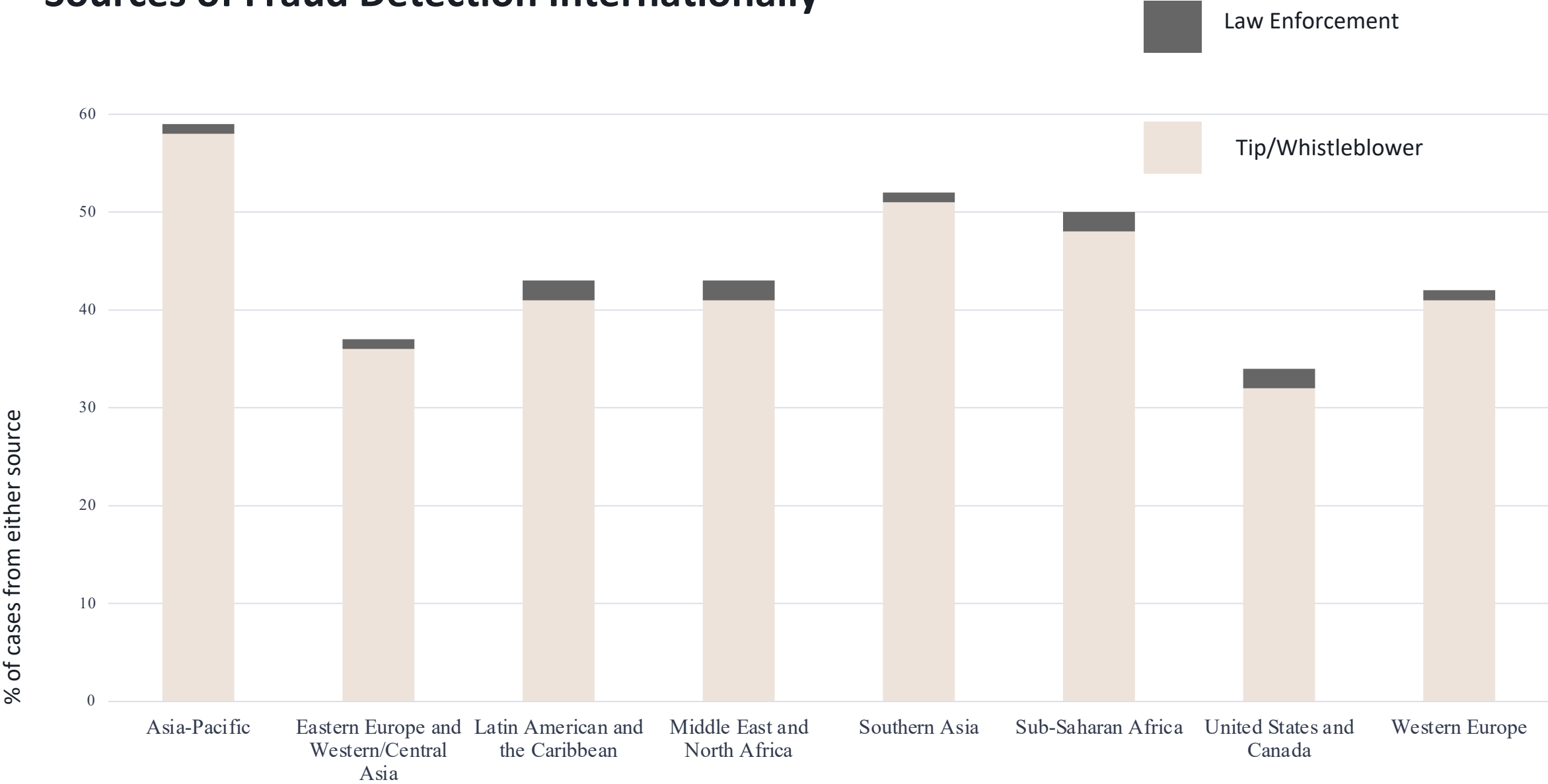
***“Going after waste,
fraud, and abuse
without
whistleblowers is
about as useful as
harvesting acres of
corn with a pair of
rusty old scissors”***

Fraud Detection Methods in Companies with 100 or More Employees



Source:
*Association of
Certified Fraud
Examiners,
"Report to the
Nations on
Occupational
Fraud and Abuse,"
(2016).*

Sources of Fraud Detection Internationally

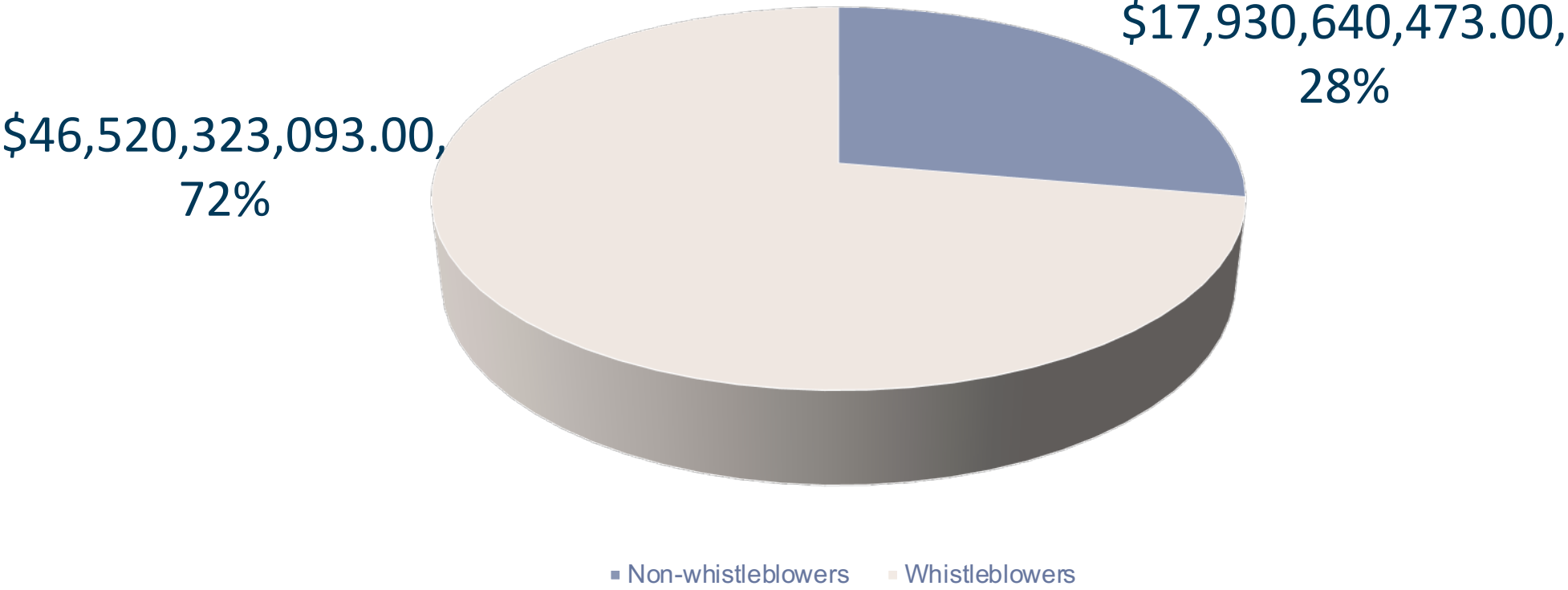


Source: Association of Certified Fraud Examiners, 2022 Report to the Nations

Part II - Whistleblowing Works



Total False Claims Act Recoveries (1987-2020)





— *Stuart Delery*,
Former Assistant Attorney General

“The False Claims Act is 'the most powerful tool the American people have to protect the government from fraud.’”



IMPLEMENTING
THE OECD
ANTI-BRIBERY
CONVENTION

PHASE 4 REPORT
United States

“The Dodd-Frank Act’s multi-faceted protections . . . Constitute[s] a good practice given that they provide powerful incentives for qualified whistleblowers to report foreign bribery allegations against issuers.”

Part III - Transnational Whistleblower Laws





Summary: US Whistleblower Laws Applicable Abroad

- FCPA (Rule 17)
- Dodd-Frank/Securities Fraud (Rule 19)
- Anti-Money Laundering Act (Rule 21)
- Commodity Exchange Act (Rule 19)
- IRS Tax Whistleblower Law (Rule 18)

Anti-Money Laundering Act

Hiding
beneficiary
owners

Banks failing to
implement KYC
(Know your
customers)

Banks failing to
file SARs
(Suspicious
Activities
Reports)





— *Kevin M. O'Neill,*

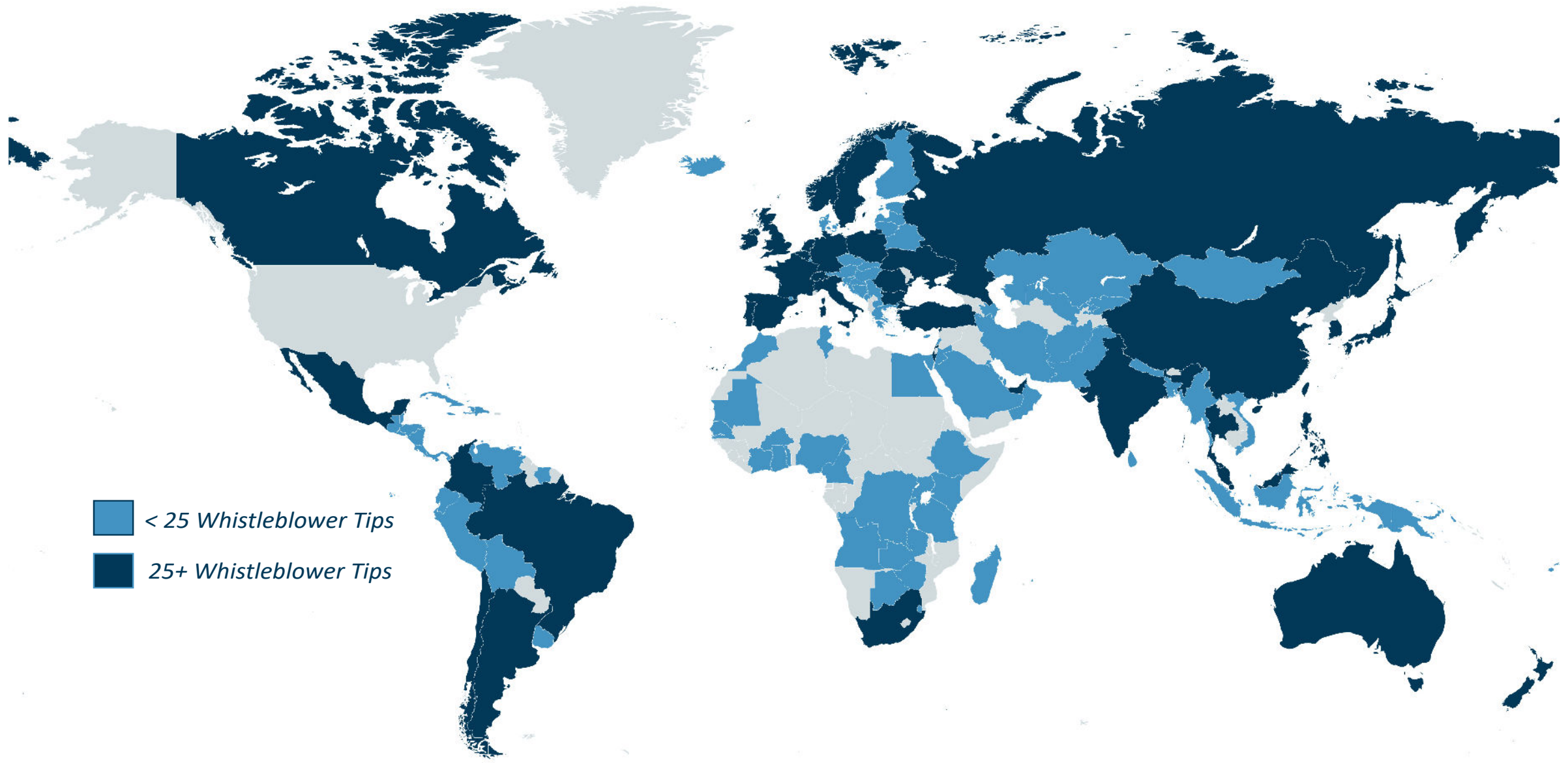
Deputy Secretary, SEC

Order Determining Whistleblower Award Claim

“[I]t makes no difference whether . . . the claimant was a foreign national, the claimant resides overseas, the information was submitted from overseas, or the misconduct comprising the U.S. securities law violation occurred entirely overseas.”

Since 2011, the U.S. Securities and Exchange Commission has received whistleblower tips from the following countries:

Source: SEC Annual Reports 2011-2021



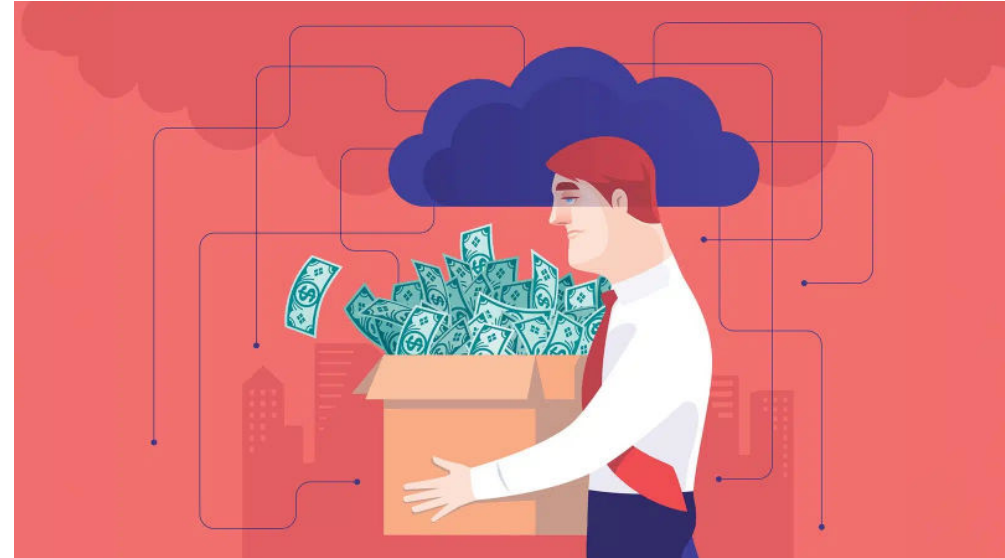
Part IV - Tax Whistleblowing Works



Background on Tax Whistleblowing in the US



**Whistleblower Law Library, Rule
18: Tax Evasion and
Underpayments: Report to the IRS**



**KKC FAQ: Blowing the Whistle on
Tax Evasion to the IRS**

USA Tax Whistleblower Law



U.S. Code
26 U.S.C. §7623



KKC FAQ: IRS Whistleblower
Program: An Overview of
Protections, Rewards, and
Reporting

REPORT FROM THE DIRECTOR OF THE IRS WHISTLEBLOWER OFFICE



“We appreciate the valuable contributions that thousands of whistleblowers have made to help bolster the fair and effective enforcement of our nation’s tax laws and the success of our voluntary tax system. Since 2007, the Whistleblower Office made awards of \$1.1 billion.”

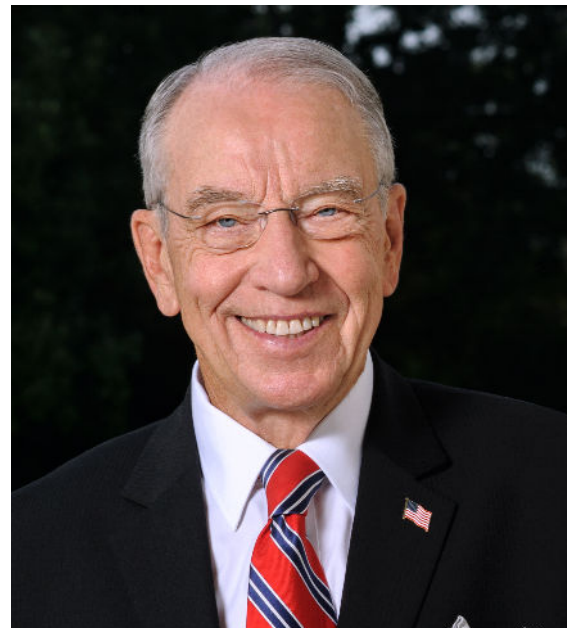
John W. Hinman Director, Whistleblower Office
2022 IRS Whistleblower Office Report to U.S.
Congress

BI-PARTISAN SUPPORT FOR THE IRS WHISTLEBLOWER LAW



U.S. Senator Ron Wyden
(D-Oregon)

“Whistleblowers play an essential role in helping to identify and root out tax cheating schemes that rip off the American people for huge amounts of money. The numbers show that the IRS whistleblower program works... the Senate ought to look for every opportunity to improve it.”



U.S. Senator Charles
Grassley (R-Iowa)

“The IRS Whistleblower Awards Program has a proven track record of success in preventing tax dodgers and fraudsters from cheating the American tax system. Whistleblowers are essential to this process.”



Dennis J. Ventry Jr,
Professor of Law,
University of California, Davis
Former Chair, IRS Advisory Council
"Not Just Whistling Dixie: The Case for Tax
Whistleblowers in the States," *Villanova Law
Review* 59, no. 3 (Aug. 2015)

"The 'treasure trove of inside information' that [the whistleblower] provided U.S. officials formed the foundation for the UBS debacle and everything that followed. Indeed, thanks to one of the biggest whistleblowers of all time, the U.S. government (take a deep breath) received: \$780 million and the names of 250 high-dollar Americans with secret accounts . . . [and] another 4,450 names and accounts of U.S. citizens . . . more than 120 criminal indictments . . . the closure of prominent Swiss banks . . . more than \$5.5 billion collected from the IRS Offshore Voluntary Disclosure Program with untold tens of billions of dollars still payable due to only a quarter of the 39,000 OVDP cases being closed . . . All because one person blew the tax whistle."

Swiss Bank Prosecutions and Settlements

Banks Prosecuted as a result of Whistleblower Disclosure/ Non-Prosecution Agreement triggered by UBS Case and Release of Client Names	Penalty
Wegelin Bank	<u>\$74 Million</u>
UBS	<u>\$780 Million</u>
Swiss Life Holding AG	<u>\$77.3 Million</u>
Bank Hapoalim	<u>\$874.27 Million</u>
Credit Suisse	<u>\$2.6 Billion</u>
Cayman National Corporation	<u>\$6 Million</u>
Julius Bear	<u>\$547 Million</u>
Bank Leumi	<u>\$270 Million</u>
BSI SA	<u>\$211 Million</u>
Vadian Bank AG	<u>\$4.253 Million</u>
Finter Bank Zurich AG	<u>\$5.414 Million</u>
Société Générale Private Banking (Lugano-Svizzera)	<u>\$1.363 Million</u>
MediBank AG	<u>\$826,000</u>
LBBW (Schweiz) AG	<u>\$34,000</u>
Scobag Privatbank AG	<u>\$9,090</u>
Rothschild Bank AG	<u>\$11.51 Million</u>

Swiss Bank Prosecutions and Settlements

Banks Prosecuted as a result of Whistleblower Disclosure/ Non-Prosecution Agreement triggered by UBS Case and Release of Client Names	Penalty
Mercantil Bank (Schweiz) AG	<u>\$1.172 Million</u>
Banca Credinvest SA	<u>\$3.022 Million</u>
Société Générale Private Banking (Suisse) SA	<u>\$17.807 Million</u>
Berner Kantonalbank AG	<u>\$4.619 Million</u>
Bank Linth LLB AG	<u>\$4.150 Million</u>
Bank Sparhafen Zurich AG	<u>\$1.810 Million</u>
Ersparniskasse Schaffhausen AG	<u>\$2.066 Million</u>
Privatbank Von Graffenried AG	<u>\$287,000</u>
Banque Pasche SA	<u>\$7.229 Million</u>
Banque Cantonale Neuchâteloise	<u>\$1.123 Million</u>
Nidwaldner Kantonalbank	<u>\$856,000</u>
SB Saanen Bank AG	<u>\$1.365 Million</u>
Privatbank Bellerive AG	<u>\$57,000</u>
PKB Privatbank AG	<u>\$6.328 Million</u>
Falcon Private Bank AG	<u>\$1.806 Million</u>
ARVEST Privatbank AG	<u>\$1.044 Million</u>

Swiss Bank Prosecutions and Settlements

Banks Prosecuted as a result of Whistleblower Disclosure/ Non-Prosecution Agreement triggered by UBS Case and Release of Client Names	Penalty
Credito Privato Commerciale in liquidazione SA (CPC)	<u>\$348,900</u>
Bank EKI Genossenschaft	<u>\$400,000</u>
Privatbank Reichmuth & Co.	<u>\$2.592 Million</u>
Banque Cantonale du Jura SA (BCJ)	<u>\$970,000</u>
Banca Intermobiliare di Investimenti e Gestioni (Suisse) SA (BIM Suisse)	n/a
Bank Zweiplus Ag	<u>\$1.089 Million</u>
Banca dello Stato del Cantone Ticino	<u>\$3.393 Million</u>
Hypothekarbank Lenzburg AG	<u>\$560,000</u>
Schroder & Co. Bank AG	<u>\$10.354 Million</u>
Valiant Bank AG	<u>\$3.304 Million</u>
Bank La Roche & Co AG	<u>\$9.296 Million</u>
St. Galler Kantonalbank AG	<u>\$9.481 Million</u>
E. Gutzwiller & Cie, Banquiers	<u>\$1.556 Million</u>
Migros Bank AG	<u>\$15.037 Million</u>
Graubündner Kantonalbank	<u>\$3.616 Million</u>

Swiss Bank Prosecutions and Settlements

Banks Prosecuted as a result of Whistleblower Disclosure/ Non-Prosecution Agreement triggered by UBS Case and Release of Client Names	Penalty
BHF-Bank (Schweiz) AG	<u>\$1.768 Million</u>
Schaffhauser Kantonalbank	<u>\$1.613 Million</u>
BBVA Suiza S.A.	<u>\$10.390 Million</u>
Piguet Galland & Cie SA	<u>\$15.365 Million</u>
Luzerner Kantonalbank AG	<u>\$11.031 Million</u>
Habib Bank AG Zurich (HBZ)	<u>\$9.4 Million</u>
Banque Heritage S.A.	<u>\$3.846 Million</u>
Hyposwiss Private Bank Genève S.A.	<u>\$1.09 Million</u>
Banque Bonhôte & Cie SA	<u>\$624,000</u>
Banque Internationale à Luxembourg (Suisse) SA	<u>\$9.71 Million</u>
Zuger Kantonalbank	<u>\$3.798 Million</u>
Standard Chartered Bank (Switzerland) SA	<u>\$6.337 Million</u>
Maerki Baumann & Co. AG	<u>\$23.92 Million</u>
BNP Paribas (Suisse) SA	<u>\$59.783 Million</u>
KBL Switzerland	<u>\$18.792 Million</u>

Swiss Bank Prosecutions and Settlements

Banks Prosecuted as a result of Whistleblower Disclosure/ Non-Prosecution Agreement triggered by UBS Case and Release of Client Names	Penalty
Bank CIC	\$3.281 Million
Privatbank IHAG Zürich AG	\$7.453 Million
Deutsche Bank (Suisse) SA	\$31.026 Million
EFG Bank European Financial Group SA, Geneva, and EFG Bank AG	\$29.988 Million
Aargauische Kantonalbank	\$1.983 Million
Cornèr Banca SA	\$5.068 Million
Bank Coop	\$3.223 Million
Crédit Agricole (Suisse) SA	\$99.211 Million
Dreyfus Sons & Co Ltd, Banquiers	\$24.161 Million
Baumann & Cie, Banquiers	\$7.7 Million
Bordier & Cie Switzerland	\$7.827 Million
PBZ Verwaltungs AG	\$5.57 Million
PostFinance AG	\$2 Million
Edmond de Rothschild (Suisse) SA and Edmond de Rothschild (Lugano) SA	\$45.245 Million
Bank J. Safra Sarasin AG	\$85.809 Million

Swiss Bank Prosecutions and Settlements

Banks Prosecuted as a result of Whistleblower Disclosure/ Non-Prosecution Agreement triggered by UBS Case and Release of Client Names	Penalty
Coutts & Co Ltd	\$78.484 Million
Gonet & Cie	\$11.454 million
Banque Cantonal du Valais	\$2.311 Million
Banque Cantonale Vaudoise	\$41.677 Million
Bank Lombard Odier & Co Ltd	\$99.809 Million
DZ Privatbank (Schweiz) AG	\$7.452 Million
Union Bancaire Privée, UBP SA	\$187.767 Million
Leodan Privatbank AG	\$500,000
HSZH Verwaltungs AG	\$49.757 Million
NPB Neue Privat Bank	\$5 Million
Mirelis Holding	\$10.245 Million
Lombard Odier	\$99.809 Million
Banque Bonhote & Cie SA	\$624,000
Coutts & Co Ltd	\$78.484 Million
Union Bancaire Privée, UBP SA	\$187.767 Million
Total: \$ 6,897,423,990 Billion	

Voluntary Compliance Program Initiated After UBS Whistleblower Case

56,000

taxpayers have entered the program

\$11.1 billion

*paid back by 2018 in back taxes,
interest, and penalties.*

Part V - The Five Steps for Creating an Effective Tax Whistleblower Program



Step One: Protect Confidentiality

Create a secure and confidential mechanism for whistleblowers to report potential crimes.

Under the USA tax law confidentiality is protected to the maxim extent permitted under law.

The IRS has taken a strong position in federal court protecting the identity of whistleblowers. [*Montgomery v. IRS*](#), Case No. 21-5168 (D.C. Cir., July 19, 2022),





Step 2: Prohibit Retaliation/Provide for strong protections and compensation

Provide strong protections for employees who suffer retaliation for making a protected disclosure. Remedies should include reinstatement, back pay, compensatory and punitive damages, and attorney fees. Procedures should guarantee due process.

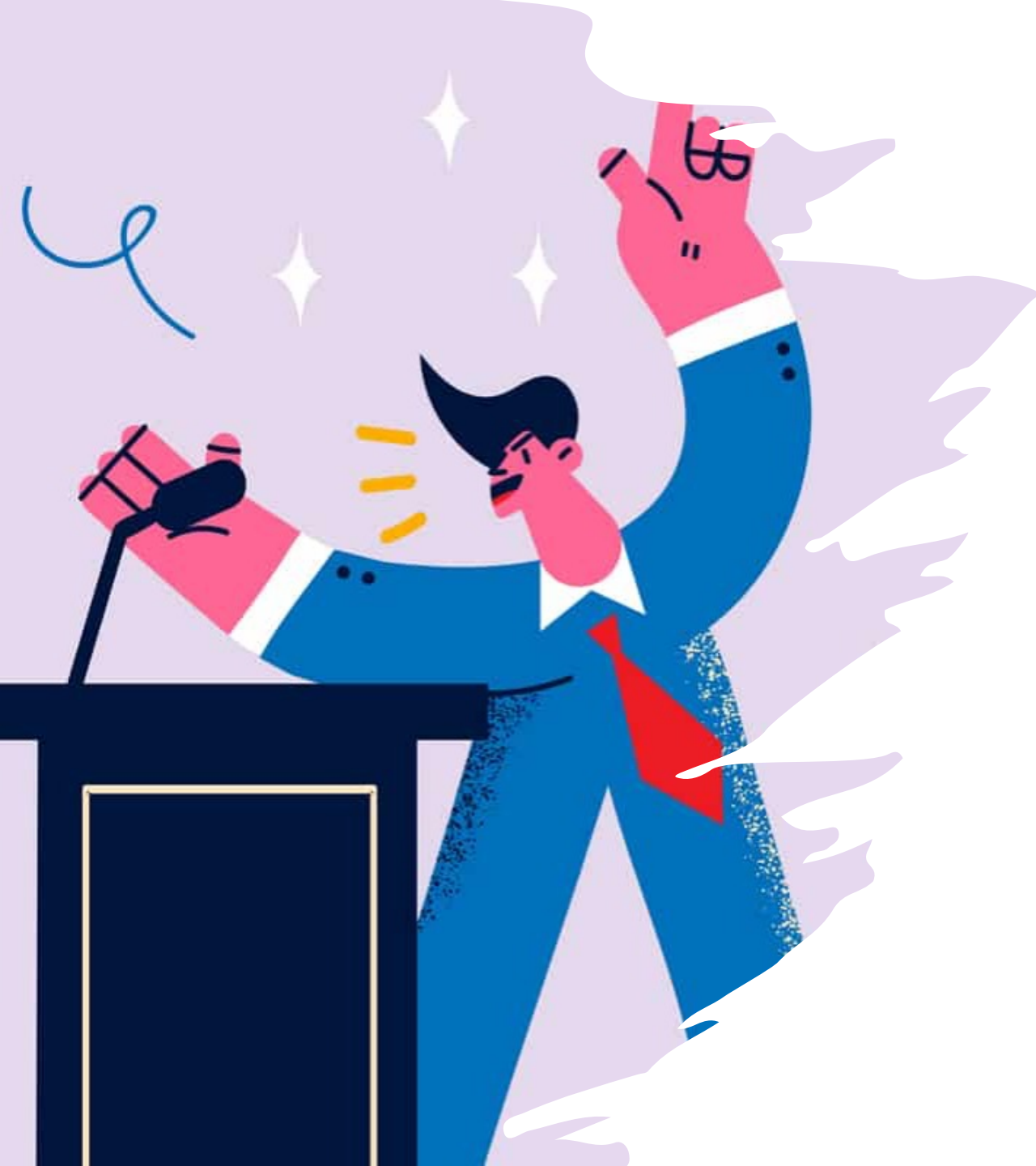
These protections are included in the USA tax whistleblower law.

Step 3: Pay Rewards

Incentivize whistleblowers to report fraud and illegal conduct by paying financial rewards based on the quality of their original information.

The IRS whistleblower law requires the IRS to pay rewards between 15-30% when the original information provided by the whistleblower results in sanctions.





Step 4: Establish an Effective Whistleblower Office

A Whistleblower Office is needed to coordinate submissions, publicize the program and ensure that a whistleblower's rights are fully protected (including a right to confidentiality).

The USA tax whistleblower law established an Office of the Whistleblower



Step 5

Partner with Domestic and International Anti-Corruption NGOs and Law Enforcement Agencies

Part VI - Resources



Stay up to date on the latest happenings in the world of whistleblowing!



<http://www.kkc.com/blog/>



<https://www.whistleblowers.org/>



<https://whistleblowersblog.org/>

RESOURCES

What is a
Whistleblower

Confidentiality

Whistleblowing
Works

International
Whistleblowing

FREE RESOURCES



- Free online access to whistleblower statutes & laws.
 - Free online access to important legal cases.
 - Free online access to “links” to relevant government agencies and other sources.
-
- Visit the online library at: <https://kkc.com/law-library/>
 - Rule 18 in *Rules for Whistleblowers* and in the on-line library provides information on the USA tax whistleblower law

*ALL THE INFORMATION
YOU NEED TO IS IN THIS
BOOK*

RULES FOR
WHISTLEBLOWERS

A HANDBOOK



Stephen M. Kohn

Chairman of the Board of Directors

National Whistleblower Center

Partner, Kohn, Kohn & Colapinto, LLP

Website: www.kkc.com

Email Steve at *consult@kkc.com*

Stephen M. Kohn is widely recognized as the leading international authority on whistleblower law. He has represented whistleblowers since 1984, including the whistleblower who reported the largest money laundering scheme in history (\$240 billion laundered from Russia/former Soviet Union to New York banks) and obtained the largest reward ever paid to an individual whistleblower who exposed illegal offshore accounts at the Swiss bank UBS (\$104 million). Steve is the most published author on whistleblower law. His new book, *Rules for Whistleblowers* was released by Lyons Press in June 2023.