NWC | NATIONAL WHISTLEBLOWER CENTER

URGENT MATTER
CHIEF COUNSEL NOMINEE

September 9, 2025

Senator Wyden
Chairman
Senate Whistleblower Protection Caucus
U.S. Senate
Washington, D.C.

Senator Grassley
Chairman
Senate Whistleblower Protection Caucus
U.S. Senate
Washington, DC.

Dear Chairman Wyden and Senator Grassley:

The National Whistleblower Center ("NWC") is writing to you in your positions as co-chairs of the Senate Whistleblower Protection Caucus regarding the administration's recent nomination of Mr. Donald Korb to be IRS Chief Counsel.

As we stated in a 2023 letter as to an earlier IRS Chief Counsel nominee, the position of IRS Chief Counsel, will markedly impact whether the IRS Whistleblower Program is going to be successful going forward. The NWC has long been a strong advocate for the IRS Whistleblower Program and greatly appreciates the long-time leadership of both of you in supporting the goals of the whistleblower program at the IRS. Due to the success of the program, American taxpayers have seen more than $7.5 billion dollars returned to the Treasury – and billions more in tax dollars being currently collected thanks to whistleblowers according to the most recent IRS Whistleblower Office annual report.

Through NWC's work – and in detailed and extensive discussions with tax whistleblowers and representatives of tax whistleblowers – it is clear that the IRS Office of Chief Counsel ("Counsel") plays a significant role in the tax whistleblower program. Unfortunately, Counsel continues at times to not play a constructive role in terms of the IRS Whistleblower Program. Too often we see IRS Counsel undermining the program and ultimately limiting the ability of the IRS to go after big-time tax cheats. It is vital that the Chief Counsel nominee commits to ensuring the full success of the IRS Whistleblower Program – with a focus on prompt payments of awards. In addition to ensuring the Chief Counsel's support for the whistleblower program in general, the NWC encourages you to raise two issues in particular that are undermining the whistleblower program – Disaggregation/Related Claims and the dollar cap on awards of older whistleblower claims – discussed in detail below.

Disaggregation and Related Claims

Particularly troubling is the role of the Office of Chief Counsel in regards to a continual problem for the IRS Whistleblower Program – timely payment of awards. We bring to your attention a significant problem that whistleblowers are facing as to a strained view of "disaggregation" which will greatly exacerbate the already long delays in awards.

As background, the NWC was pleased that the IRS had put forward guidance that allowed for more expansive use of "disaggregation" (IRM 25.2.2.6.1.1) – and thank you both for your leadership in making that happen. The policy of disaggregation has resulted in new awards being made after years of unnecessary delay.

However, the NWC understands that the Chief Counsel has recently given guidance to the Whistleblower Office that there should be no disaggregation for "related actions" – that all related actions must be finalized before any award can be made. In plain language what this means is that if a whistleblower were, for example, to blow the whistle on tax evasion by a financial institution and the institution's clients – then the whistleblower will not get paid until the institution and all of the institution's clients tax payments are audited and final collections are made (and all appeal rights completed for all the clients). Such a policy will easily add ten more years plus to an already incredibly long process – and will impact most those whistleblowers blowing the whistle on the worst actors.

This new policy of disaggregation/related action – not subject to notice and comment -- goes against the long-time practice of the Whistleblower Office to pay awards as each individual taxpayer is finalized (commonly on an annual basis for ease of administration). In short, to look at each individual taxpayer involved and determine whether there is final determination of tax – and, if so, pay an award.

Further, this step back on disaggregation/related action goes against the Treasury Regulations which in the preamble to the 2014 Treasury Regulations, Treasury noted: Recognizing that some claims result in more than one action, the definition of "final determination of tax" . . . *provides the Whistleblower Office with the discretion to aggregate or disaggregate actions arising out of a single claim , meaning that the Whistleblower Office can, in appropriate cases, make more than one final determination with respect to a single claim for an award*. That discretion provided by the regulations is now being removed by this new rule – a rule that has not been put forward for notice and comment in violation of the Administrative Procedures Act (APA).

Finally, the disaggregation/related action policy goes directly against the 2006 statute – which created a mandatory award program – requiring that a whistleblower shall receive an award once there are collected proceeds. Now the WBO can essentially delay for years and year any award as it waits for all related actions to be finalized. This new policy also is completely at odds with the 2014 Treasury Regulations which state in the preamble in rejecting a set timeline stated: "Under the proposed regulation, the *IRS will pay any award* under section 7623 to a whistleblower *as promptly as circumstances permit* after there has been a final determination of tax with respect

to the action(s) and after the Whistleblower Office has determined the award and all appeals of the determination are final or the whistleblower has executed an award consent form." (emphasis added) The Treasury Regulations repeatedly speak to having prompt payment of awards as a priority. However, the disaggregation/related action policy is counter to that policy.

The NWC asks that you consider raising this with the IRS Chief Counsel nominee – and to request that he withdraw this policy as to "related action" vis a vis "disaggregation" for reconsideration and review.

Remove Cap on Awards

Second, the NWC is concerned that the IRS Whistleblower Office continues through guidance - that has not been subject to notice and comment - to impose a cap on certain older whistleblower awards. There is nothing in the statute or the regulations that support a cap – the cap is wholly a creation of bureaucracy. In fact, Congress imposed a cap on the IRS whistleblower program by law when first put in place in 1860s and then quickly repealed the cap in 1866. Congress opposed caps then and opposed caps when it passed the 2006 reforms. However, the Whistleblower Office has ignored the intent of Congress and through guidance (not going through notice and comment – in violation of the APA) has imposed caps on older whistleblower filings. It is particularly troubling that not only have these older whistleblowers waited over twenty-plus years for an award – but that they (unlike any other whistleblower) then have their award capped to add insult to injury.

Further, the Whistleblower Office cap policy itself is completely nonsensical. First, the longer the whistleblower has had to wait for an award -- the lower the maximum cap. Under the IRS policy if the whistleblower has been waiting for thirty years they are capped at $100,000; twenty years; $2 million and 18 years at $10 million. Second, the cap is the same regardless of the value of the whistleblower's information or how much taxes is brought in – so a whistleblower whose information is highly valuable and a whistleblower whose information was of marginal value are capped at the same amount. Finally, the cap on awards goes directly against the long-standing IRS policy of awarding whistleblowers based on the policy at the time of award determination *not* the policy at time of filing.

It is difficult to imagine a more uninformed, indefensible and poorly considered policy to discourage whistleblowers to come forward. It is not surprising that the IRS has never published for notice and comment this ill-conceived cap policy – without any basis in statute or regulation. Failures by the IRS to provide fair and reasonable awards for older whistleblower cases discourages today's whistleblowers from coming forward. The IRS must be seen as being committed to equal and impartial treatment of all whistleblowers.

The NWC has had to fight the efforts of government agencies to impose caps on whistleblower awards – most recently the Securities and Exchange Commission (SEC) just a few years ago. We thank you both for your efforts to ensure the proposed caps on whistleblower awards at the SEC were ultimately rejected. The IRS Whistleblower Office cap in place already is unjustified and without support in the statute and regulations. The NWC understandably fears that

there will be an effort by some at the IRS to build and expand on the cap that is already improperly in place – and undermine the success of the IRS whistleblower program.

To be clear, no other modern whistleblower award program has a cap – False Claims Act; SEC or Commodity Futures Trading Commission (CFTC). No cap. Only the IRS whistleblower program has a cap.

Finally, the 2006 amendments to the IRS whistleblower program not only created the mandatory award program they also created the IRS Whistleblower Office – a key reform. A critical purpose of the Whistleblower Office was and is to provide standard procedures for whistleblowers. The 2006 Treasury Inspector General for Tax Administration (TIGTA) report on the IRS whistleblower program made a key finding that the then-whistleblower program lacked standardized procedures and limited managerial oversight. TIGTA's top recommendation was to centralize management of the whistleblower program and standardize the processing of whistleblower claims. The Joint Committee on Taxation Blue Book states in its discussion of the IRS amendments that the creation of the Whistleblower Office will address the recommendations of the TIGTA report – i.e. standardization.

The 2014 Treasury Regulations for the whistleblower program recognized the need for standardization of process – noting that the Director of the Whistleblower Office had authority overall whistleblower awards – with the goal of "promoting consistency across the full range of award decisions." Similarly, the Tax Court and the D.C. Circuit Court of Appeals have repeatedly stated their view that the establishment of the IRS Whistleblower Office was to address the arbitrary and inconsistent treatment of whistleblowers due to a lack of standardized procedures.

It is far past time to end the arbitrary and inconsistent treatment of whistleblowers – as intended by Congress with the creation of the Whistleblower Office – and eliminate the cap on awards placed on those whistleblowers who have waited the longest for an award.

We ask that you consider raising with the IRS Chief Counsel nominee a request to withdraw the ill-conceived IRS policy imposing a cap on older whistleblower awards. Exhibit 25.2.2-1. of the IRM - - and ensure that all whistleblowers are treated the same – no cap on awards. We also request you consider asking the IRS Chief Counsel nominee to confirm that he will oppose any efforts to impose a cap on whistleblower awards.

Thank you for your time and consideration of this matter. As always, the NWC greatly appreciates your work and efforts on behalf of whistleblowers. Please feel free to directly reach out to me on my personal email, sk@kkc.com. The Program Manager of the National Whistleblower Center can also help address any issues related to this matter. Her email is jeana.lee@whistleblowers.org

Respectfully submitted,

/s/
Stephen M. Kohn
Chairman, Board of Directors

cc: Chairman Mike Crapo