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**Testimony of Adam E. Buchanan, Counsel, Mayor's Office of Contract Services,
Before the New York City Council Governmental Operations Committee
Proposed Intro. 479-A: Requiring City Contractors to Post Information
Concerning Their Employees' Whistleblower Protection Rights**

April 16, 2012

Good morning Chairperson Brewer and Council members. I am Adam Buchanan, counsel at the Mayor's Office of Contract Services (MOCS). On behalf of the Administration, I appreciate the opportunity to testify today about Proposed Intro. 479-A, which requires city contractors to post information concerning their employees' whistleblower protection rights. Overall, the Administration supports the goals behind Proposed Intro. 479-A of 2011.

In Fiscal 2011, New York City procured almost \$15 billion worth of supplies, services and construction, through more than 55,000 transactions. New York City employs procurement as one of its essential tools to serve the public and accomplish critical governmental functions. Agencies procure the goods and services they need to fulfill their missions, from trucks to sweep and salt the streets, to architectural designs for new firehouses, from biodiesel fuel for City vehicles, to nonprofit service providers working in communities throughout the City.

With significant restructurings of major client services programs, as well as new investments in core services, infrastructure, waste management and economic development, New York City remains one of the largest contracting jurisdictions in the nation. Accordingly, it is imperative that the City only do business with responsible partners - vendors whose records of integrity, financial capacity and successful performance justify the use of public tax dollars. One of our office's core missions is to assist



agencies in making such responsibility determinations for each vendor that gets awarded a contract. We do so primarily through the administration of the VENDEX database, which contains detailed information on City vendors and related entities, including principal owners and officers, subsidiaries, parent companies and affiliates. Every City agency consults the VENDEX database in order to make responsibility determinations for each contract transaction it enters into with a private vendor.

Though the City works hard to do business only with responsible vendors, there may be times when a vendor acts in an effort to defraud the City in the performance of its contract. Discovering such occurrences is a challenge, as those perpetrating the fraud or false claims for payment make it difficult to discover. One of the ways the City can learn of such acts is through the reports of a whistleblower. Proposed Intro. 479-A requires contractors to post information communicating whistleblower protection rights on any site where work pursuant to a City contract is performed. The Administration supports a posting requirement that would help in the discovery of fraudulent acts by its contractors.

While the Administration supports the goal behind Proposed Intro. 479-A, there are a number of changes we would like to see made to the legislation in order to make it more useful to contractors' employees and less administratively burdensome for those who have to comply. For example, we suggest increasing the contract value threshold that would trigger the posting requirement from \$50,000 to \$100,000 in order to bring it in line with the VENDEX filing requirement. Additionally, we would include language that would instruct employees on how to make reports of fraud, criminality or corruption in connection with City contracts to the Department of Investigation, as DOI has authority to investigate and take action regarding various forms of fraud and criminality that rest outside of the various False Claims acts. We would be more than happy to work with the Council to make such changes to the bill.

Regarding Int. 816 of 2012, MOCS supports the comments submitted by DOI and shares that agency's reservations concerning the bill.

During these challenging economic times, we must achieve the best value for the taxpayers' dollar, meaning we must obtain high quality goods and services from responsible business partners. Prop. Intro. 479-A will ensure that the employees of City contractors are aware of their rights should they assist the City in helping to root out fraud.

I am available to answer any questions the Committee may have at this time.



MICHAEL A. CARDOZO
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April 13, 2012

Members of the Committee
New York City Council Committee on Governmental Operations
City Hall
New York, NY 10007

Re: New York City False Claims Act

Dear Members of the Committee:

I write to express support of the Pre-considered Introductory bill that would both amend and extend the City's False Claims Act (the "Act" or "FCA"). As you are aware, we wrote previously on January 19, 2012 in support of the testimony of the Department of Investigation ("DOI") that was presented at the Committee's hearing regarding the proposed extension of the Act. A copy of this testimony is attached.

The revisions proposed by the Committee to the current Act would make it more consistent with State law in ways we believe are beneficial, and would continue to achieve the purposes the law was enacted to fulfill. It would allow us to continue the collaboration with DOI which, since enactment of the law, has resulted in increasing numbers of people bringing claims to our attention for review and investigation.

Thank you for the opportunity to comment on this proposed Pre-considered Introductory Bill.

Sincerely yours,

A handwritten signature in cursive script that reads "Gail Rubin".

Gail Rubin
Chief, Affirmative Litigation

Attachment



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January 19, 2012

Members of the Committee
New York City Council Committee on Governmental Operations
City Hall
New York, NY 10007

Re: New York City False Claims Act

Dear Members of the Committee:

We write in support of the New York City Department of Investigation ("DOI") testimony regarding the importance of extending the City's False Claims Act. The False Claims Act provides a cause of action for whistleblowers (relators) and requires that these individuals bring evidence of false claims to DOI, as described in the written DOI testimony. In addition, the City's False Claims Act also provides that the City, through the Corporation Counsel, may institute a civil action to recover funds. These provisions have given the City a useful additional tool to combat fraud, adding to the arsenal of claims that the City pleads in civil cases along with claims of breach of contract, common-law fraud, restitution and other causes of action seeking recovery of funds. As indicated in the written testimony of DOI, information submitted pursuant to the City's False Claims Act has led to financial recovery to the City, criminal investigations and changes in agency practices.

As to the whistleblower (relator) provisions in the law, the Law Department is aware of 81 Federal, State or City False Claims Act relator filings since the enactment of the City's False Claims Act. Not all of them plead the City's False Claims Act and therefore may not have been submitted to DOI before they were sent to the Law Department. Of the 81, 52 plead Medicaid or Medicare claims. As noted in the written testimony submitted by DOI, criminal and civil investigations and prosecutions of Medicaid or Medicare fraud allegations are generally handled by the Federal and State authorities.

Of the 29 non-Medicaid or Medicare cases of which the Law Department is aware, 12 are closed and 17 remain open and the subject of on-going consideration. Many of these cases in the pipeline would be adversely affected by the sunset provision of the City's False Claims Act.

Even though it has a savings provisions, which provides that the expiration date of the law shall not apply to any civil enforcement action commenced pursuant to Section 7-804 of the Administrative Code prior to the expiration date, that savings provision may not apply to those matters where a proposed civil complaint has been submitted to DOI, but a "civil enforcement action" has not yet been commenced in court. Hence, the remaining open matters under consideration by DOI and/or the Law Department may be adversely affected if the law were allowed to sunset.

The Law Department has not commenced any cases pursuant to the relator provisions of the City's False Claims Act, although several matters remain open for consideration, and a claim may be resolved without commencing a suit under the City's False Claims Act -- for example, through settlement. Because many relator cases plead Federal and State False Claims Act claims as well and are filed in court under seal, we cannot be more specific on these issues.

Aside from the relator provisions, the City has pled a civil enforcement claim under the City's False Claims Act in at least 8 cases, along with other causes of action such as breach of contract, common law fraud, the State False Claims Act, and restitution in several matters involving overcharges to the City, false and inflated invoicing and bid-rigging. Several of the various cases in which the City's False Claims Act has been included as a claim have been resolved through negotiation and settlement. A recent example of a case in which the Law Department has pled a civil enforcement claim under the City's False Claims Act is the case first brought by a relator under the State False Claims Act against the Bank of New York Mellon, concerning the manner in which the Bank trades foreign exchange on behalf of its custodial clients. The Law Department, on behalf of the pension funds, joined the Attorney General, and filed a superseding complaint that pled various claims, including a claim under the City's False Claims Act.

Sincerely yours,



Gail Rubin
Chief, Affirmative Litigation



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April 13, 2012

Members of the Committee
New York City Council Committee on Governmental Operations
City Hall
New York, NY 10007

Re: Introductory No. 816, the "Non-City Employee Whistleblower
Protection Act"

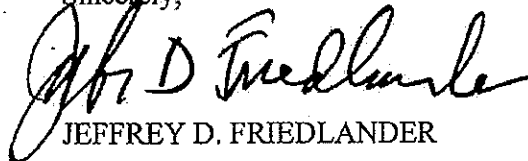
Dear Members of the Committee:

We join the Department of Investigation ("DOI") in opposing the enactment of Introductory No. 816. Like DOI, we recognize the importance of encouraging employees to report misconduct in connection with City contracting, and the provision of protection from retaliation of employees who act in the public interest in reporting wrongdoing. It is our view, however, that the bill not before the Committee should not be enacted into law.

The City Charter establishes DOI as the City's means of uncovering corruption and wrongdoing. Adding to its already extensive responsibilities the task of investigating private sector allegations of employee retaliation would divert the agency from the vital role it plays in City government to the detriment of the people of the City who rely on its efforts, and would place unsupportable burdens on its resources. Moreover, this bill would entangle DOI and the City in private sector personnel and labor relations. There are private sector collective bargaining agreements, as well as the fabric of State and Federal labor relations law and precedent into which it would be unwise for the City to intrude and where City actions may lead to litigation and unforeseen legal consequences.

For these reasons we would urge that the proposal not be adopted.

Sincerely,


JEFFREY D. FRIEDLANDER

**WRITTEN STATEMENT OF THE DEPARTMENT OF INVESTIGATION
BEFORE THE NEW YORK CITY COUNCIL COMMITTEE ON GOVERNMENTAL
OPERATIONS**

I am here today to express DOI's strong opposition to the proposed amendments to Section 12-113 of the New York City Administrative Code, the City's "Whistleblower Law." As the investigative arm of New York City government and specifically the agency charged with investigating claims of retaliation under the Whistleblower Law, DOI sees day to day how important its protections are to the DOI's efforts to combat corruption, fraud and conflicts of interest in City government. Last year alone, DOI received approximately 13,670 complaints. A significant number of these came from City employees. Since 2002, DOI has given 4,654 Corruption Prevention and Whistleblower Protection lectures to 133,393 City employees, to explain their rights and protections under the Whistleblower Law. Our website is replete with information about our mission, and since 2002, permits complaints to be filed on line. Since 2005, we do fiscal year-end and calendar year -end press releases conveying the broad range of subjects we cover. In sum, the profile of the Department is very high, so much so that since 2002, we have received and investigated numerous complaints of retaliation by City employees.

Based on our firsthand experience, DOI strongly opposes Intro 816 and we urge the Council not to pass it. While DOI believes that private sector workers who report corruption related to City contracts to DOI should be free from retaliation for making such complaints, our experience investigating and enforcing the Whistleblower Law has shown that the proposed inclusion of private sector employees within the Law's scope would be a misguided. Instead, the proposed amendment would result in City government involving itself in private sector personnel matters and disputes by mandating that DOI investigate any complaint by a covered private sector worker who alleges retaliation. Moreover, DOI does not have the resources to devote to what could potentially be an avalanche of mandatory investigations of matters within thousands of private companies throughout the City. With this proposed amendment to the Whistleblower Law, DOI's already limited resources would be diverted away from the true business of the agency: protecting the public fisc and the City's programs and people from fraud, corruption and conflicts of interest.

By its terms, the proposed amendment to the Whistleblower Law requires DOI to conduct an investigation to determine whether any employee of a private vendor doing business with the City - and there are thousands - who alleges retaliation has actually suffered an adverse personnel action by his or her private employer, and if so, whether that action was taken as a result of a good faith complaint to one of the entities identified in the statute. Such investigations are labor intensive and most often involve witness interviews and the review of a significant

body of documents. DOI's experience shows that a Whistleblower Law investigation often not only involves investigating the allegations by the complainant of retaliation, but also an investigation of the employer's claims of prior misconduct by the employee. DOI does conduct such investigations as they relate to claims against City agencies, as is appropriate given DOI is the Inspector General for those agencies.

It is also important to note that protections do already exist for the employees of private vendors doing business with the City. Additionally, DOI treats all complaints it receives as confidential, whether they come from a City employee, a member of the public, or an employee of a City vendor. This practice minimizes the risk that an employer would ever know that an employee was the source of a complaint made to DOI. Moreover, anyone who interferes with our investigation, including by pressuring or taking action against an employee, could find themselves under investigation for obstruction or interference with an investigation. DOI would certainly investigate and scrutinize any such conduct and does so. In addition, private sector employees are afforded protections from retaliation. Principal among these is the City's False Claims Act which contains specific remedies for complainants to compensate them in the event they are retaliated against for making a complaint to DOI. In addition, New York State Labor Law prohibits retaliation against employees who make complaints about public health and safety issues to various entities, including DOI.

In order to make these anti-retaliation provisions more effective, DOI supports the concept behind Int. 479 which mandates notice to the employees of City vendors of the various protections from retaliation that are afforded them under the law. As mentioned, DOI already widely and proactively educates the public about such rules, with apparent success given the number of people who report matters to us, most are people who provide us with their contact information who we then communicate with. However, DOI does not support the proposed mandatory notice provisions contained in Int. 479-A because, as written, that proposed law fails to require notice be given to employees of how a complaint can be made to DOI. We believe that such notice is a key component of any successful program to combat corruption and fraud in City government and to protect the expenditure of City funds.

We appreciate your providing us with the opportunity to share what we have learned from our experience and for your consideration of our comments.

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April 16, 2012

Statement of Neil V. Getnick

Re: New York City False Claims Act and Other Whistleblower Laws

Good morning Chairperson Brewer, Members of the Committee on Governmental Operations, Counsel Grossman, and staff. Thank you for your invitation to appear here today following up on my appearance at your January hearing. I am Neil Getnick, the managing partner of Getnick and Getnick LLP. I am also the chairperson of Taxpayers Against Fraud, which is the leading national advocacy organization for the False Claims Act and other whistleblower laws with citizen provisions, but I am testifying today in my individual capacity.

I am pleased that, after your last hearing, Council Member Brewer sponsored an amendment to the City's False claims Act preserving and extending it (Preconsidered Int. No. ("PIN") § 3, amending 2005 N.Y.C. Local Law No. 53 § 4). I also find it encouraging that so many of the improvements that were discussed at the January hearing are incorporated in this latest proposed version of the City's False Claims Act and the other legislative proposals under consideration today, including: adopting a more flexible application of the public disclosure bar and allowing the City the option to waive its application when it makes sense to do so (PIN § 1, amending N.Y.C. Admin. Code § 7-804 (d)(3)); conforming the relator's share percentages with that of the state and Federal False Claims Acts (PIN §2, amending N.Y.C. Admin. Code (i)(1)-(2)); increasing outreach to whistleblowers (Proposed Int. No. 479-A ("479-A"), creating N.Y.C. Admin. Code § 6-130); and strengthening anti-retaliation protections for whistleblowers (Int. No. 816 ("816"), amending N.Y.C. Admin. Code § 12-113).

I believe the statute would be further improved by conforming the public disclosure bar to that of the amended New York State False Claims Act, which has the most efficacious public disclosure provisions in the nation. You have already improved the public disclosure bar by changing the language to bar actions when based on "substantially the same allegations or transactions," rather than the more general restriction that the complaint not be "derived from" publicly disclosed information. New York State has made several other key changes, however, which I also recommend. In order for government reports to be considered "publicly disclosed," the state requires that they be broadly disseminated to the general public or on the public record. Information obtained through Freedom of Information requests is not considered publicly

disclosed. Additionally, information posted on the internet does not necessarily constitute “news media.”¹

As in January, I encourage you to join the State in specifically permitting actions to recover taxes under the City’s False Claims Act. As the largest city in the nation, New York City derives substantial revenue from taxes. While there is no “tax bar” specifically preventing such actions, some courts in other jurisdictions have barred such actions absent specific enabling legislation. Tracking the language of the amended New York State False Claims Act would solve that potential problem, ensuring New York City’s ability to recover tax dollars lost to tax evasion.²

As was discussed at the previous hearing, underutilization of the City’s False Claims Act may be due to the fact that people simply do not know about the law and, importantly, that they would be protected against retaliation by their employer. 479-A, sponsored by Council Member Garodnick and others, takes an important step toward informing would-be whistleblowers of the protections provided to them under the city, state, and Federal False Claims Act, should they wish to report fraudulent behavior, and providing the encouragement that “there is no risk of retaliation to employees who perform such lawful acts.”

816, also sponsored by Council Member Garodnick and others, extends whistleblower protections to employees of city contractors and also takes an impressive step toward protecting those who report fraud by their employers. The City’s expansive definition of “adverse personnel action” creatively addresses one of the practical consequences affecting whistleblowers who bring these cases. It goes beyond preventing “dismissal, demotion, suspension, disciplinary action, or negative performance evaluations,” but also prevents what all too commonly happens to those who report fraud—“loss of staff, office space, equipment or other benefit.” Additionally, I applaud the City’s innovative efforts in creating an additional hammer against whistleblower retaliation: permitting the City to withhold payment on the contract, find the contractor in default, cancel the contract, or otherwise pursue remedies or sanctions under the contract if a company retaliates against a whistleblower and fails to correct that wrong.

¹ New York State False Claims Act, N.Y. State Fin. Law § 190(9)(b) (2010)(“NYS FCA”): Civil Actions for False Claims. Certain Actions Barred. “(b) The court shall dismiss a qui tam action under this article, unless opposed by the state or an applicable local government, or unless the qui tam plaintiff is an original source of the information, if substantially the same allegations or transactions as alleged in the action were publicly disclosed:

(i) in a state or local government criminal, civil, or administrative hearing in which the state or a local government or its agent is a party;

(ii) in a federal, New York state or New York local government report, hearing, audit, or investigation that is made on the public record or disseminated broadly to the general public; provided that such information shall not be deemed “publicly disclosed” in a report or investigation because it was disclosed or provided pursuant to article six of the public officers law, or under any other federal, state or local law, rule or program enabling the public to request, receive or view documents or information in the possession of public officials or public agencies;

(iii) in the news media, provided that such allegations or transactions are not “publicly disclosed” in the “news media” merely because information of allegations or transactions have been posted on the internet or on a computer network.”

² NYS FCA § 189(4)(a): Liability for Certain Acts. “This section *shall apply* to claims, records, or statements made under the tax law...” (Emphasis added).

Currently the law requires that the whistleblower specifically request that their anonymity and confidentiality be protected. In order to avoid an inadvertent misunderstanding, the better approach in my view would be to require that protection unless the whistleblower specifically requests otherwise.³

To conclude, I believe that the City False Claims Act and the Council's actions to extend and improve it are a point of pride. This law, first passed in 2005, is valuable and should be expanded. The legislative improvements that have developed over time have pointed the way for positive change. In addition to extending the law, the legislative proposals under consideration today make significant improvements to the Act, and to whistleblower protections more generally. I believe the Act would benefit further from making the additional changes I have proposed today. I want to thank the Committee for the opportunity to appear and for the work that you have done to further improve this law. Most of all, thank you for continuing to support and advance the public-private partnership that makes the City False Claims Act so effective.

³ Int. No. 816 § 2, amending N.Y.C. Admin. Code § 12-113(9)(b)([2.]3.) (“Upon request, the commissioner, council member, public advocate [or], comptroller or chief procurement officer receiving the report of alleged adverse personnel action shall make reasonable efforts to protect the anonymity and confidentiality of the officer or employee making such report.”) We propose striking the phrase “Upon request” at the beginning of that sentence and substituting the phrase “Unless the officer or employee specifically requests otherwise. . .”

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April 16, 2012

Supplemental Statement of Neil V. Getnick
Re: New York City False Claims Act and Other Whistleblower Laws

In keeping with the strengthened anti-retaliation protections for whistleblowers proposed by Int. No. 816 ("816"), I also strongly recommend that you add provisions emulating those contained in the New York State False Claims Act. The state law expands the scope of the law's anti-retaliation provision so that it also applies to "contractors" or "agents," rather than just employees. It clarifies that whistleblowers are protected for undertaking any lawful act to prevent a violation of the False Claims Act. Additionally, the law covers harms by a "prospective employer or contractor" to protect the whistleblower from being blacklisted. It also protects an employee from civil suits by employers for transmitting evidence of fraud to the government, or to private counsel so long as the transmissions were solely an effort to prepare or file a *qui tam* suit. See NY State Finance Law § 191 (2012).¹

¹ NY State Finance Law § 191 (2012)

§ 191. Remedies

1. Any current or former employee, contractor, or agent of any private or public employer who is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment, or otherwise harmed or penalized by an employer, or a prospective employer, because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action brought under this article or other efforts to stop one or more violations of this article, shall be entitled to all relief necessary to make the employee, contractor or agent whole. Such relief shall include but not be limited to:

- (a) an injunction to restrain continued discrimination;
- (b) hiring, contracting or reinstatement to the position such person would have had but for the discrimination or to an equivalent position;
- (c) reinstatement of full fringe benefits and seniority rights;
- (d) payment of two times back pay, plus interest; and
- (e) compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

2. For purposes of this section, a "lawful act" shall include, but not be limited to, obtaining or transmitting to the state, a local government, a qui tam plaintiff, or private counsel solely employed to investigate, potentially file, or file a cause of action under this article, documents, data, correspondence, electronic mail, or any other information, even though such act may violate a contract, employment term, or duty owed to the employer or contractor, so long as the possession and transmission of such documents are for the sole purpose of furthering efforts to stop one or more violations of this article. Nothing in this subdivision shall be interpreted to prevent any law enforcement authority from bringing a civil or criminal action against any person for violating any provision of law.

3. An employee, contractor or agent described in subdivision one of this section may bring an action in the appropriate supreme court for the relief provided in this section.



CITIZENS UNION OF THE CITY OF NEW YORK

Testimony to the New York City Council on Renewal of the False Claims Act and an Extension to and Notification of Whistleblower Protections April 16, 2012

Good morning Chair Brewer and members of the Governmental Operations committee. Thank you for the opportunity to testify today on renewal of the False Claims Act and extension to and notification of the whistleblower protection laws.

Citizens Union is an independent, non-partisan, civic organization of New Yorkers who promote good government and advance political reform in our city and state. Integral to our mission are efforts to achieve effective, efficient, accountable and open government. It is within this context that we evaluated the bills being considered by the Governmental Operations committee today.

Renewal of the False Claims Act

The False Claims Act aims to uncover fraud and corruption in city government, goals Citizens Union wholeheartedly supports, by rewarding whistleblowers who bring claims of fraud to the attention of the city's Department of Investigation and the Law Department. Enacted in 2005, the False Claims Act has been infrequently utilized. In ten actions, the city's Corporation Counsel has pled a claim under the act, six of which resulted in monies recovered through settlement for wrongdoing like fraudulent billing and royalty claims.¹ However, despite the receipt of 23 civil complaints under the Act, the Corporation Counsel did not take action on 17 of these (6 are still pending) largely because the majority of complaints were Medicaid claims which come under the jurisdiction the state's False Claims Act.² In effect, no complaints have ever resulted in a civil enforcement proceeding occurring under the Act.

Citizens Union supports the renewal of the False Claims Act as we fully support the intent of the legislation and a review of legal actions since its passage shows that it has not led to a significant increase in the number of lawsuits or administrative costs to the city. Indeed the very existence of the Act may deter the fraudulent activity it seeks to prevent or punish. Given the relative infrequency with which claims have been filed under the Act, we recommend the following enhancements as part of the legislation's renewal:

¹ Oversight: Examining the Usage and Efficacy of New York's False Claims Act. Briefing Paper of the Governmental Affairs Division, Committee on Governmental Operations, New York City Council. January 20, 2012.

² Ibid.

1. Plaintiffs should be permitted to commence a civil enforcement proceeding without permission from Corporation Counsel, as is allowed in the state's False Claims Act. The city's False Claims Act prevents the plaintiffs from doing so without the permission of Corporation Counsel. While plaintiffs have the ability to bring an action on their own on behalf of a local government through the state's False Claims Act, it requires they shift jurisdictions after initiating a civil complaint through the city proceeding. If plaintiffs continue to be barred from the right to bring cases without the permission of Corporation Counsel, the city's Corporation Counsel should at minimum be required in law to make complainants aware of their ability to bring the same complaint to the state with the potential for unilaterally bringing the case. Exceptions to civil enforcement actions pursuant to section 2(b)(3) and 2(c) should remain in place even if plaintiffs are permitted to commence a civil enforcement proceeding.

2. The False Claims Act should be extended to cover complaints related to local tax law consistent with the State Claims Act that allows for complaints to be brought in relation to this area of law. During these challenging fiscal times, Citizens Union believes that laws related to taxes should be fully enforced, and opportunities should be provided to ensure instances in which taxes are not paid to the city can be reported. Certain actions barred under section d of the bill should apply to civil complaints regarding local tax law so that, in particular, claims are not made for values of less than \$25,000.

Citizens Union does not have a position on increasing the percentage of payouts to those persons bringing civil complaints to 15-25 percent rather than 10-25 percent in instances in which Corporation Counsel has pled a claim, and to 25-30 percent from 15-30 percent in instances in which a person commenced a civil enforcement proceeding with the permission of the Corporation Counsel. This may make sense to better incentivize individuals to bring complaints given that no complaints since 2005 eventually led to civil proceedings. For that same reason, it would seem to cost the city next to nothing in funds.

Int. No. 816

Similar in spirit to the False Claims Act is the No-City Employee Whistleblower Protection Act, or Int. No. 816. The Whistleblower Protection Law currently provides protections for whistleblowers from retaliation by city officers or employees if they make a "report of information concerning conduct which he or she knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by another city officer or employee, which concerns his or her office or employment, or by persons dealing with the city, which concerns their dealings with the city..."

Citizens Union believes whistleblower protections are integral to ethical and accountable government and strongly supports this bill which will extend the current

law to employees of contractors with the city, rather than simply employees of the city. The necessity of this bill can hardly be overstated. The city has experienced a dramatic rise in private-sector contracting, totaling 17,000 different contracts valued together at \$10.5 billion or 1/7 of the City's budget.³ Meanwhile, 90 percent of the 27,538 complaints to the city's Department of Investigation over the last two years have come from anonymous sources, many of whom were public employees, demonstrating the importance of protections for whistleblowers.⁴

Citizens Union recommends this bill go further, and provide whistleblower protections for any employees of a subcontractor indirectly doing business with the city.

Subcontractors, less visible and known by the city agencies and entities than primary contractors, are more likely to escape scrutiny that ensures government is accountable. On the scandal-ridden CityTime project, it was subcontractor Technodyne that ultimately received \$450 million of the more than \$700 million spent on the troubled payroll system.⁵ They are alleged to have engaged in conspiracy in a kickback scheme with the primary contractor, Scientific Applications International Corporation (SAIC).⁶ Technodyne's founders have fled the country and remain at large. Had whistleblower protections been in place, they may not have been able to rip off the city of the hundreds of millions of dollars they did that was only recently repaid in part by SAIC.

Int. No. 479-A

The final bill in the package being considered today is Int. No. 479-A, which requires that city contractors post information about whistleblowers' rights at work sites or risk sanctions for non-compliance. **Citizens Union backs this bill in order to ensure workers are aware of this right, and suggests that such notification also be provided with employment papers like W-2s when employees are first hired. Employees should be required to sign such notification, which should be collected and retained by employers for the length of the workers' employment with the contractor.**

³ Farley, John. "In City Contracts, No Room for Whistleblowers," *Metro Focus*, April 4, 2012. Available at: <http://www.thirteen.org/metrofocus/news/2012/04/in-city-contracts-no-room-for-whistleblowers/>

⁴ Blau, Reuven. "New York City Snitches Account for 90% of Complaints of Wrongdoing Against City Employees," *New York Daily News*, April 2, 2012. Available at: <http://www.nydailynews.com/new-york/york-city-snitches-account-90-complaints-wrongdoing-city-employees-article-1.1054291>

⁵ Hennelly, Bob. "CityTime Payroll Scandal a Cautionary Tale." *WNYC*, June 29, 2011. Available at: <http://www.wnyc.org/articles/its-free-country/2011/jun/29/citytime-cautionary-tale/>

⁶ Ibid.

Lindsey M. Williams

Director of Advocacy & Development

**Testimony Before the New York City Council,
Committee on Governmental Operations**

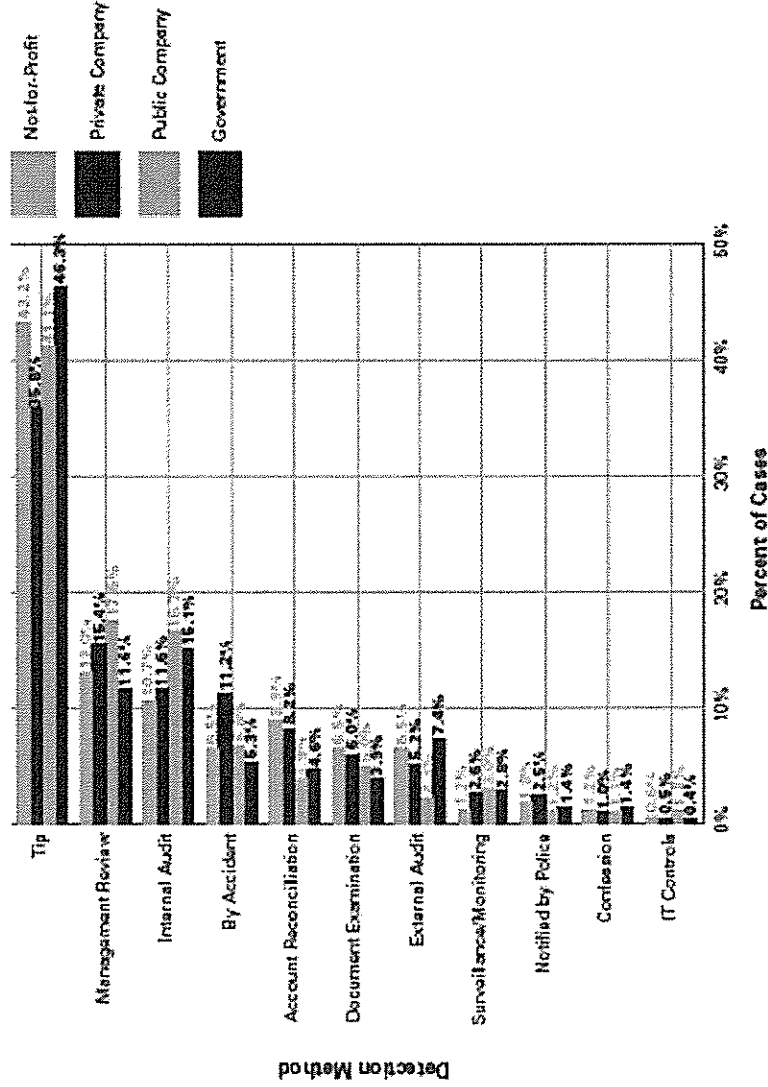
April 16, 2012

NWNC | NATIONAL
WHISTLEBLOWERS
CENTER

WWW.WHISTLEBLOWERS.ORG

Whistleblowers #1 in Detection of Misconduct

Initial Detection Method by Organization Type



Association of Certified Fraud Examiners (ACFE) 2010 Global Fraud Study

Whistleblowers Need Protection

“While tips have consistently been the most common way to detect fraud, the impact of tips is, if anything, understated by the fact that so many organizations fail to implement fraud reporting systems.”

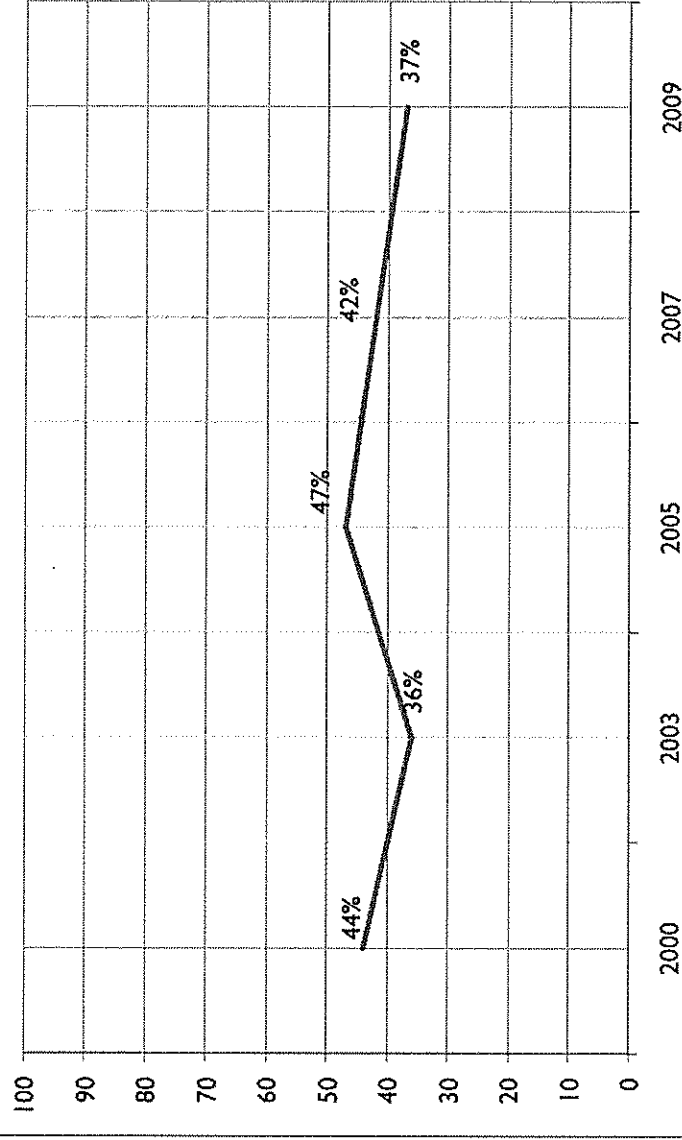
ACFE 2010 Global Fraud Study

Whistleblowers Need Protection

**Most Employees Do Not
Report Misconduct to
the Appropriate
Authorities**

40% Of Workers Do Not Report Misconduct To Anyone

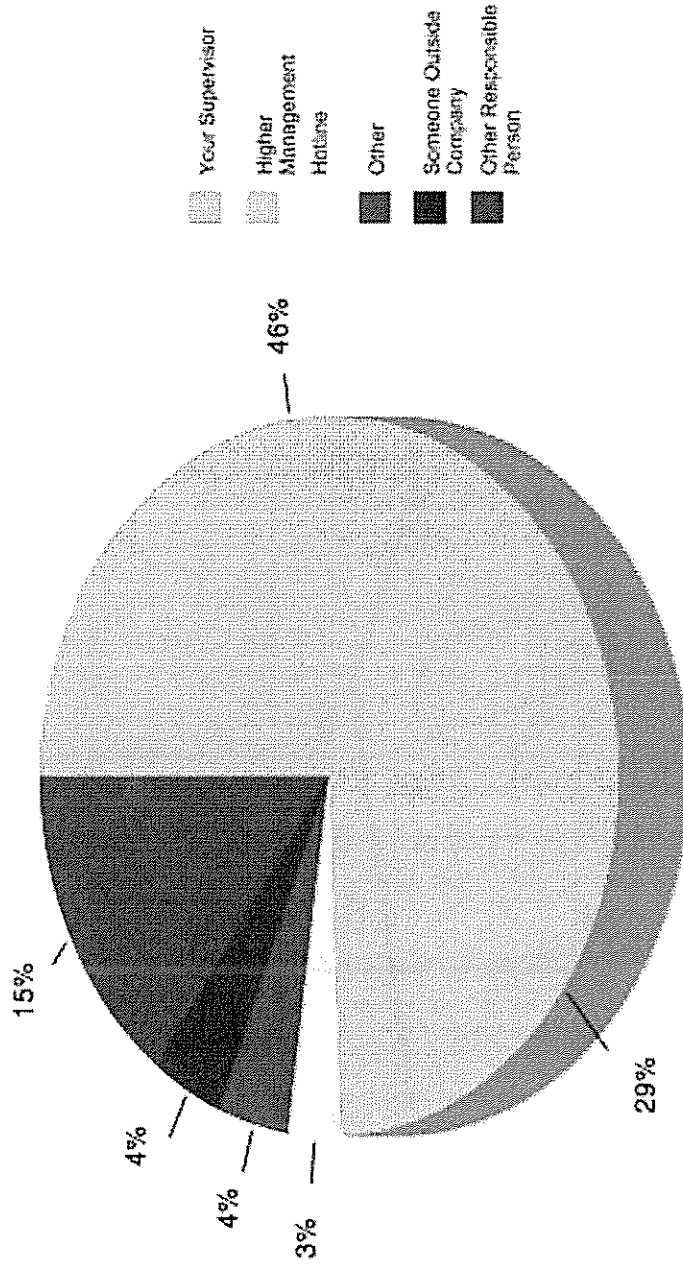
Percentage Who Failed to Report Misconduct to Any Person 2000-2009



Ethics Resource Center 2010 Whistleblowers Study

Majority Of Workers Who Report Misconduct Never Inform The Government

2009 Employee Reporting Behavior



Whistleblower Reward Programs

False Claims Act

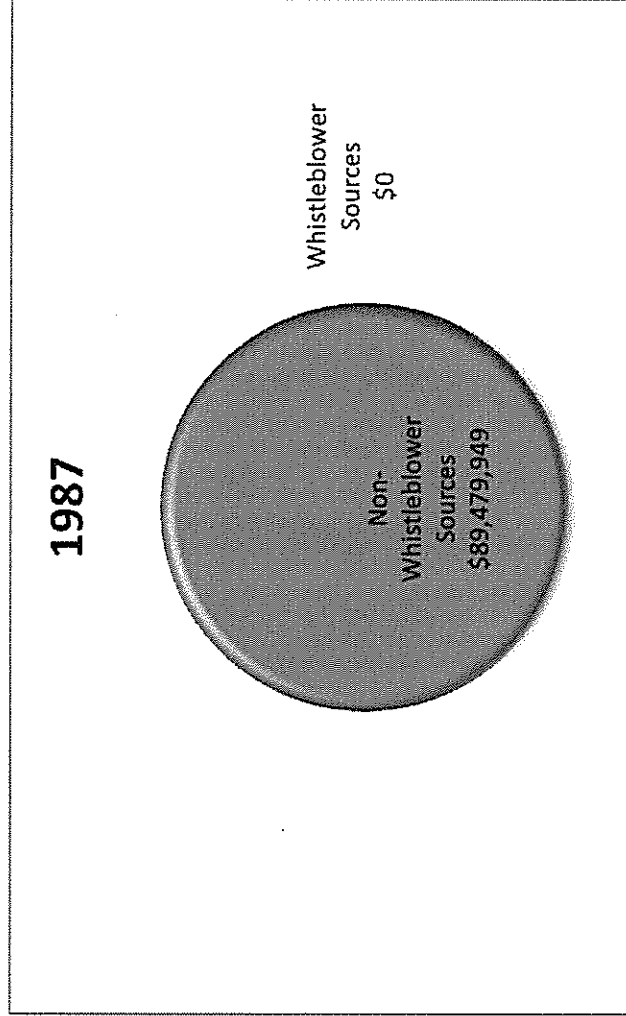
“I have based [the False Claims Act] on the old fashion idea of holding out on temptation and ‘setting a rogue to catch a rogue’, which is the safest and most expeditious way of bringing rogues to justice.”

Senator Howard,

Congressional Globe, March 1863

U.S. Civil Fraud

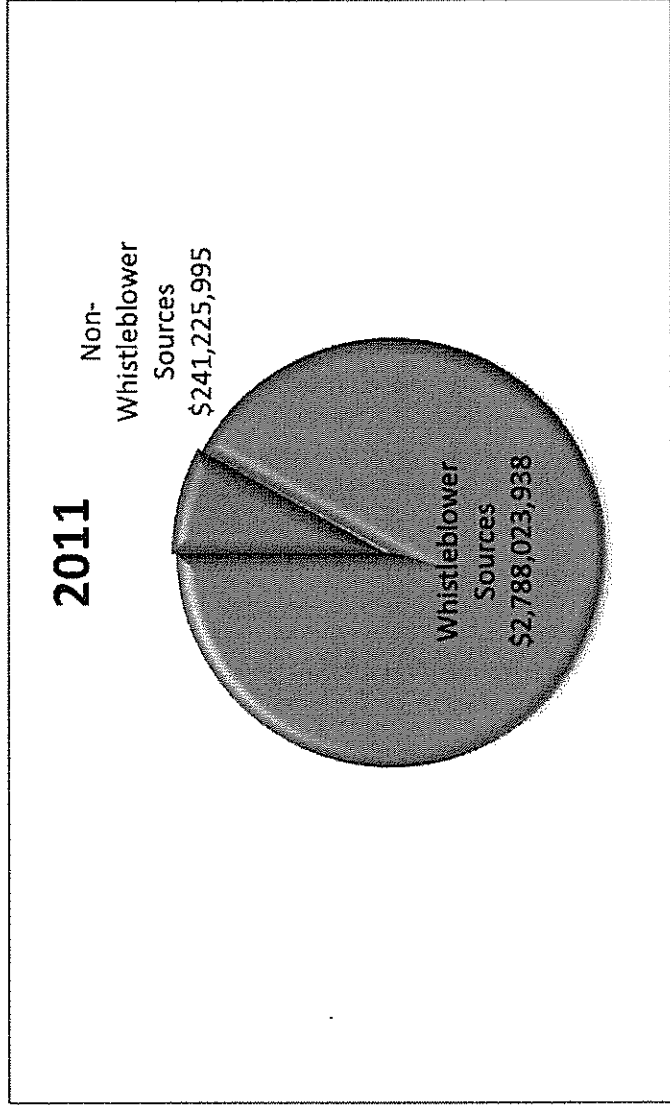
Recoveries Before Rewards Law



Department of Justice (DOJ) Fraud Statistics

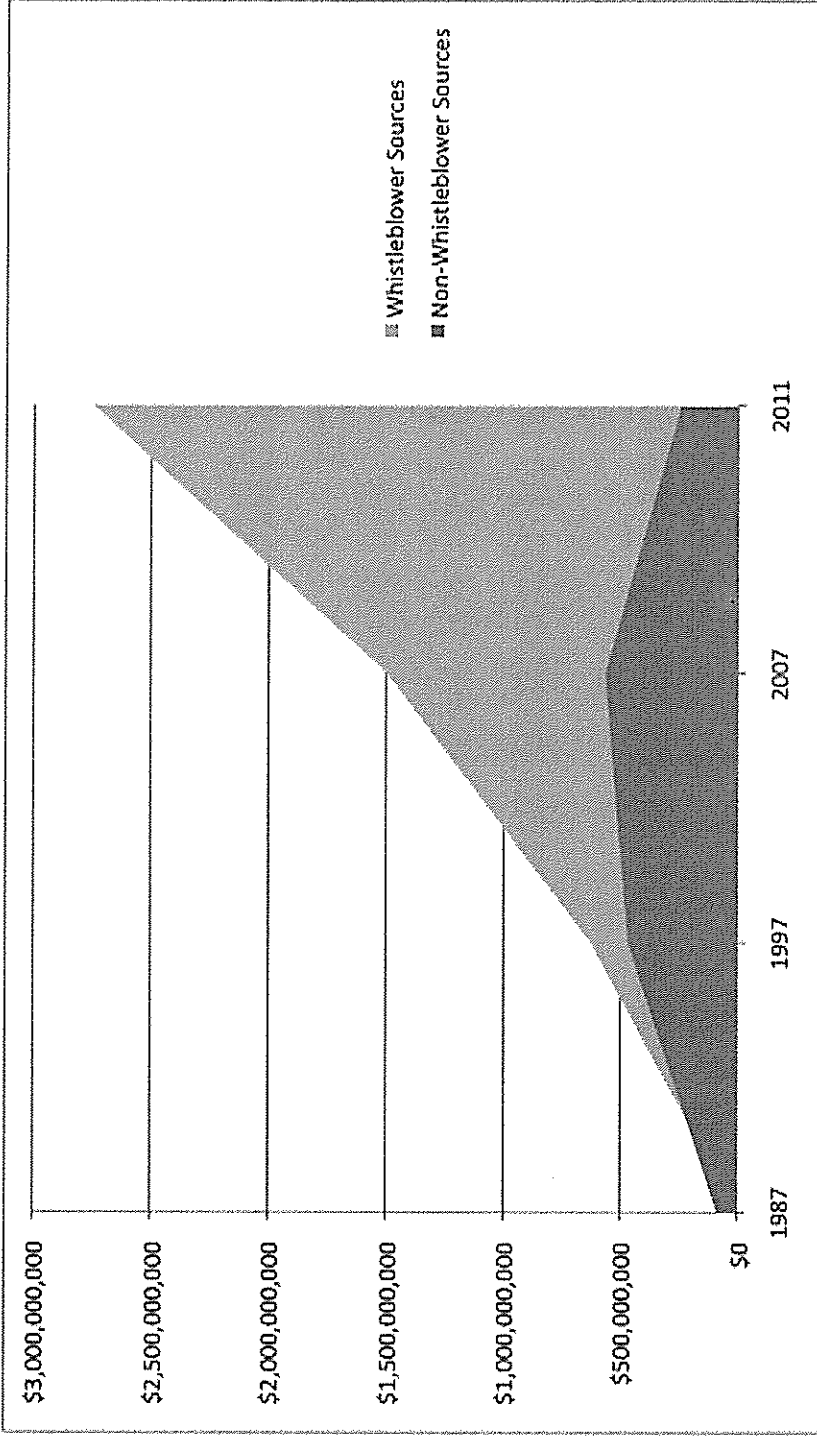
U.S. Civil Fraud

Recoveries 24 Years After Rewards Law



DOJ 2011 Fraud Statistics

FCA Recoveries Continue to Grow



DOJ 2011 Fraud Statistics

Federal Civil Fraud Recovery

- **Alta Colleges - \$7 million** for misrepresenting college programs
- **AT&T - \$8.2 million** for overbilling schools under the E-Rate program
- **Canadian bullet-proof vest manufacturer - \$1 million** for sale for sale of defective bullet-proof vests
- **Computer Assets Inc. - \$35 million** for defrauding E-Rate program
- **NetApp - \$128 million** for contract fraud

Federal Civil Fraud Recovery

- **Defense contractor Northrop Grumman - \$325 million for sale of defective parts**
- **Hurricane Katrina contractor - \$4 million for failing to complete work**
- **National home builder and mortgage lender - \$53 million for fraudulent origination activities**
- **TOTAL Whistleblower 2011 Recovery: \$3,029,249,933 billion**
- **TOTAL Whistleblower 1986-2011 Recovery: Over \$21 billion**

State Civil Fraud Recovery

- **State Street Bank, Bank of New York Mellon - Expected Over \$1 billion for Foreign Exchange frauds involving state pension funds (CA, VA, FL)**
- **BankAmerica - \$187 million for improperly retained unclaimed municipal bonds (CA)**
- **Toshiba - \$30 million for knowingly sold defective computers (CA)**
- **Tutor-Saliba-Perini JV - \$31.9 million for fraudulent billing during construction of Los Angeles subway system (CA)**

State Civil Fraud Recovery

- **Mandated Cost Systems Inc.** - \$3.4 million for submission of inflated and false bills (CA)
- **Driscoll Children's Hospital & Foundation** - \$14.5 million for filing false expense reports, reporting inflated charity work, and engaging in kickbacks (TX)
- **Strategic Resource Solutions** - \$43.1 million for fraud involving installation and monitoring of energy-efficient heating and cooling equipment in San Francisco schools (CA)

Tax Whistleblower Qui Tam Laws

- **Internal Revenue Act of 2006 (Tax Whistleblowing)** - 10%-30% Reward for Whistleblowers who provide original information on tax frauds
- **Applies to International Banking** - US Tax Whistleblower Law can cover International Banks that violate U.S. Tax Laws (secret bank accounts)
- **UBS Bank Scandal** – One whistleblower’s disclosure forced the Swiss bank UBS to pay \$780 million fine and release the names of thousands of U.S. taxpayers who held secret accounts in Switzerland to the American government (well over \$5 billion in individual collections)

Problems With The New York City False Claims Act

- **The New York City False Claims Act (FCA) is not being used because it is not strong**
- **Fix the weaknesses in the law and make the New York City FCA a model for other states and cities**
- **Current proposed reforms important but more are needed**

New York City: A Model For Success

The NWC's expert legal staff can work with the City Council in developing language that will ensure the effectiveness of the New York City False Claims Act

- **Better standing requirements**
- **Real *qui tam* procedures**
- **Include tax fraud**
- **Include provision to coordinate with federal investigations**
- **Stronger damage provisions**
- **Procedures to ensure that fraud cases are not dismissed on technicalities that permit guilty contractors to escape accountability**

New York City: A Model For Success

Benefits of Enhancing the New York City FCA in a manner consistent with the original 1863 “Lincoln Law”

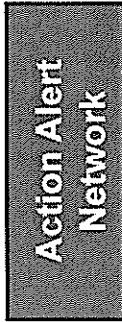
- **More fraud recoveries**
- **Stronger deterrent**
- **Encourage all *qui tam* whistleblowers to include the New York City Act in their complaints**

NWC Online Resources

www.whistleblowers.org



Tune in for interviews with leading whistleblower experts, firsthand accounts from major government and corporate whistleblowers, and more. Listen every Tuesday at 1:00 pm ET on www.whistleblowersradio.org.



Subscribe to the NWC's Action Alert Network to receive periodic updates on whistleblower issues at www.whistleblowers.org/subscribe



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Engage in discussions about whistleblower issues and get the latest news by subscribing to the Whistleblower Protection Blog's RSS feed at www.whistleblowersblog.org



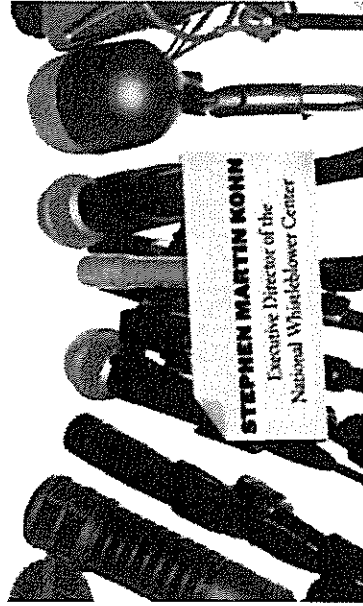
Join our circle on Google+ at www.gplus.to/whistleblowers

NWC Resources

21 Rules For Whistleblowers

T H E Whistleblower's H A N D B O O K

**A Step-by-Step Guide to Doing
What's Right and Protecting Yourself**



"Whistleblowers should do two things: call us at 60 Minutes and read The Whistleblower's Handbook. It's 21 rules lay out the game plan for holding institutions accountable while protecting your job."

Michael Radutzky, Senior Producer
60 Minutes

"Don't let your boss catch you reading it."
Wall Street Journal

"Whether you are a corporate crime defense counsel, a worker thinking on turning in your crooked boss, or a whistleblower's lawyer – we recommend you pick up this book."
Corporate Crime Reporter

List of Sources

- ACFE 2010 Global Fraud Study:
<http://www.whistleblowers.org/storage/whistleblowers/documents/acfe2010report.pdf>
- ERC 2010 Study “Blowing the Whistle on Workplace Misconduct”:
<http://www.whistleblowers.org/storage/whistleblowers/documents/DoddFrank/ercwhistleblowerwp.pdf>
- DOJ 2011 Fraud Statistics:
<http://www.whistleblowers.org/storage/whistleblowers/documents/doj.2011.fraudstats.pdf>

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Website: www.whistleblowers.org

E-mail: contact@whistleblowers.org

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 816 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Marjorie Landa - Dep Commissioner Legal

Address: 8 Haden Lane

I represent: Department of Investigation

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/16/12

(PLEASE PRINT)

Name: Neil Getnick (Getnick v. Getnick)

Address: 620 5th Avenue, N.Y., N.Y.

I represent: self

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/16/12

(PLEASE PRINT)

Name: Alex Camardese

Address: _____

I represent: Citizens Union

Address: 299 Broadway

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/16/2012

Name: Adam Bichara (PLEASE PRINT)

Address: 253 Broadway 9th Fl.

I represent: Administration

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4-16-12

Name: Lindsey M. Williams (PLEASE PRINT)

Address: 3238 IP Street, NW Washington, DC 20007

I represent: National Whistleblowers Center

Address: _____

Please complete this card and return to the Sergeant-at-Arms