



The Ever-Changed Business: How COVID-19 Has Impacted HR, Business Disputes, and Internal Threats

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Today's Presenters



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Agenda

During today's webinar, we will address the following:

- HR Challenges with a Remote Workforce
- Adapting Company Culture/Management Styles for Remote Workers
- Considerations for Reasonable Accommodations Under the ADA
- Evolving Contract Provisions
- Changes to Business Models Due to Changes in Commercial Real Estate
- Challenges Created by the WFH Environment in Discovery
- Profiling Fraud
- Internal Precautions
- Projections



Human Resources



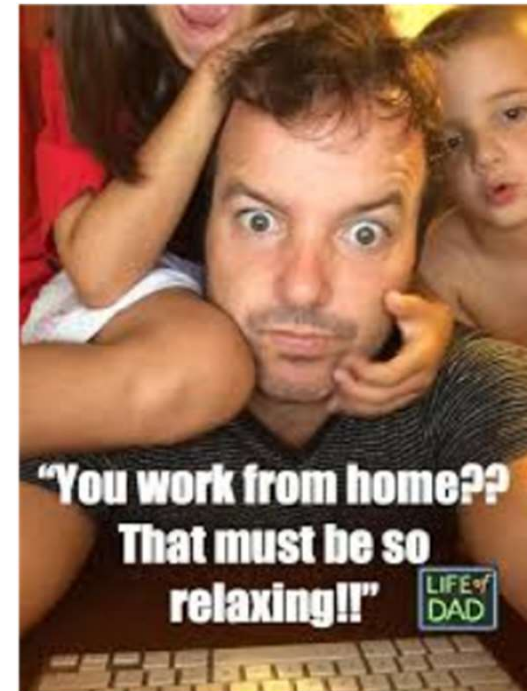
Let's Take a Poll

How has self-quarantine affected your human resources/employee relations practices?

- A. Not at all. We are managing our employees in the same way we have always done it.
- B. We made some minor changes and allowed some high-risk individuals to work from home.
- C. Quite a bit. We have a large number of employees working from home, have had to adapt the way we hire/onboard employees to a virtual environment, and have made changes in the way we manage our employees to adapt to our remote workforce.

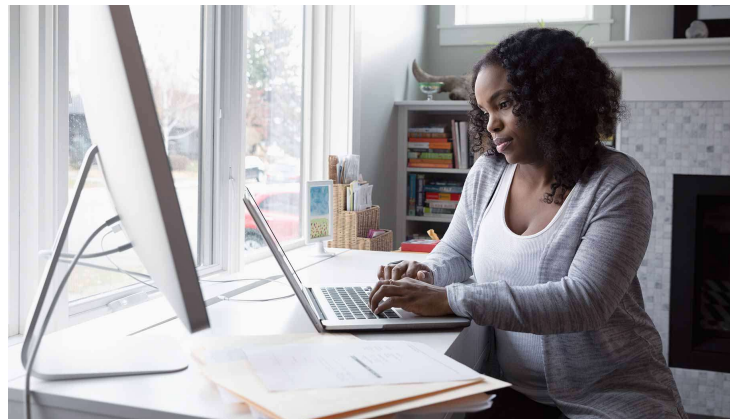
Challenges with a Remote Workforce

- Timekeeping and Fair Labor Standards Act
- Tracking Productivity
- Project Management
- Customer Service Quality
- Distractions/Interruptions
- Quarantine Fatigue and Work-Life Balance



Adapting Company Culture

- Candidates expect businesses to offer remote work
- Remote work can be good for business—increased flexibility can increase production and employee morale while decreasing operating costs
- How do you stay connected with employees? How do they stay connected with each other?
- How do you maintain your company's culture with remote employees?
- How do you combat your employee's social isolation while working from home?



Changes to Management Styles

- Train Management on how to supervise remote employees
- Changes in Communication/Engagement Styles
- Develop Clear Remote Work Rules and Expectations
- One-on-One Check-ins
- Employee Feedback/Kudos



Reasonable Accommodations Under the ADA

- The ADA requires reasonable accommodations as they relate to three aspects of employment: (1) ensuring equal opportunity in the application process; (2) enabling a qualified individual with a disability to perform the essential functions of a job; and (3) making it possible for an employee with a disability to enjoy equal benefits and privileges of employment.
- Current state of the law presumes that an accommodation will be provided. Employer must show undue burden not to provide one.
- Prior to COVID-19 working from home could be shown not to be a reasonable accommodation.
- Has this changed, in a post COVID-19 environment?
 - EEOC Guidance
 - More Difficult to Show It's Unreasonable

Business Disputes



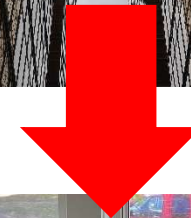
Evolving Contract Provisions

- Force Majeure
 - Consider COVID-19 specific language
 - Timelines, extensions and term
- Allocating risks in potential payment delays
- Addressing supply chain challenges
- Impact of government shutdowns
- Hardship clauses
- ¹¹Business Interruption Insurance



Commercial Real Estate Impacting Business Models

- Trend toward downsizing office space
 - Some (limited) sectors have increased space needs
- Physical distancing requirements changing the delivery of services
- Redefining target customers
- Expanding reach beyond defined geographical areas



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POLLING QUESTION

Does your company have a BYOD policy?

- A. Yes
- B. No
- C. What is BYOD?



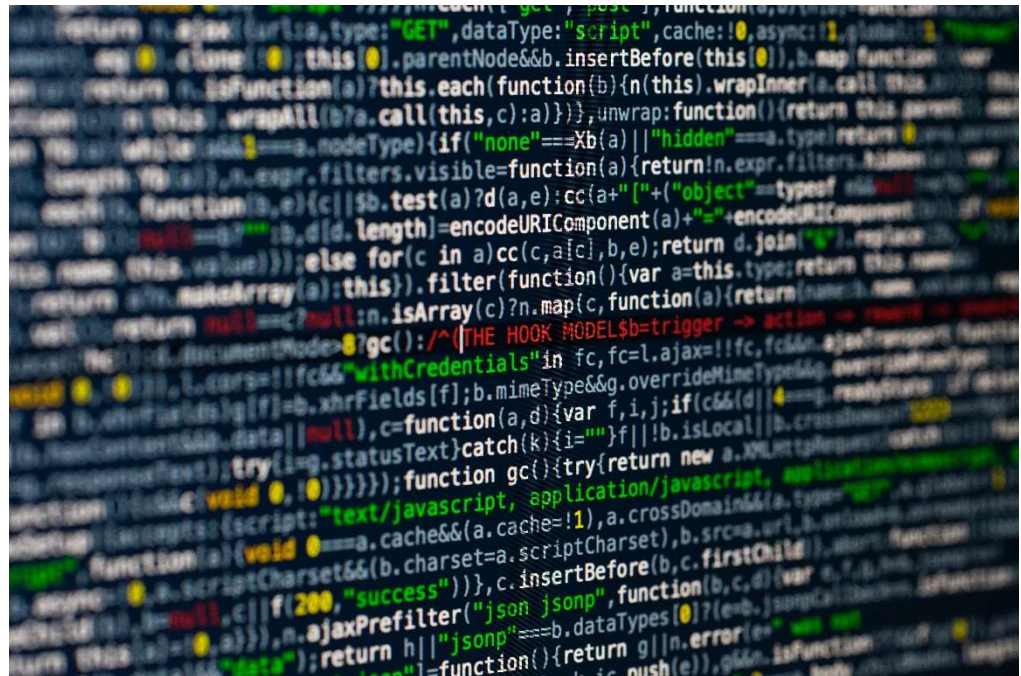
Does WFH Pose Challenges in Discovery?

- Easier to establish a personal device was used for work purposes
- BYOD Policies
 - Access and restrictions
 - Use of storage clouds
- Capturing and Collecting
 - Consideration of “other devices”
 - Increased need for remote collection



Ways to Reduce Preservation Risks

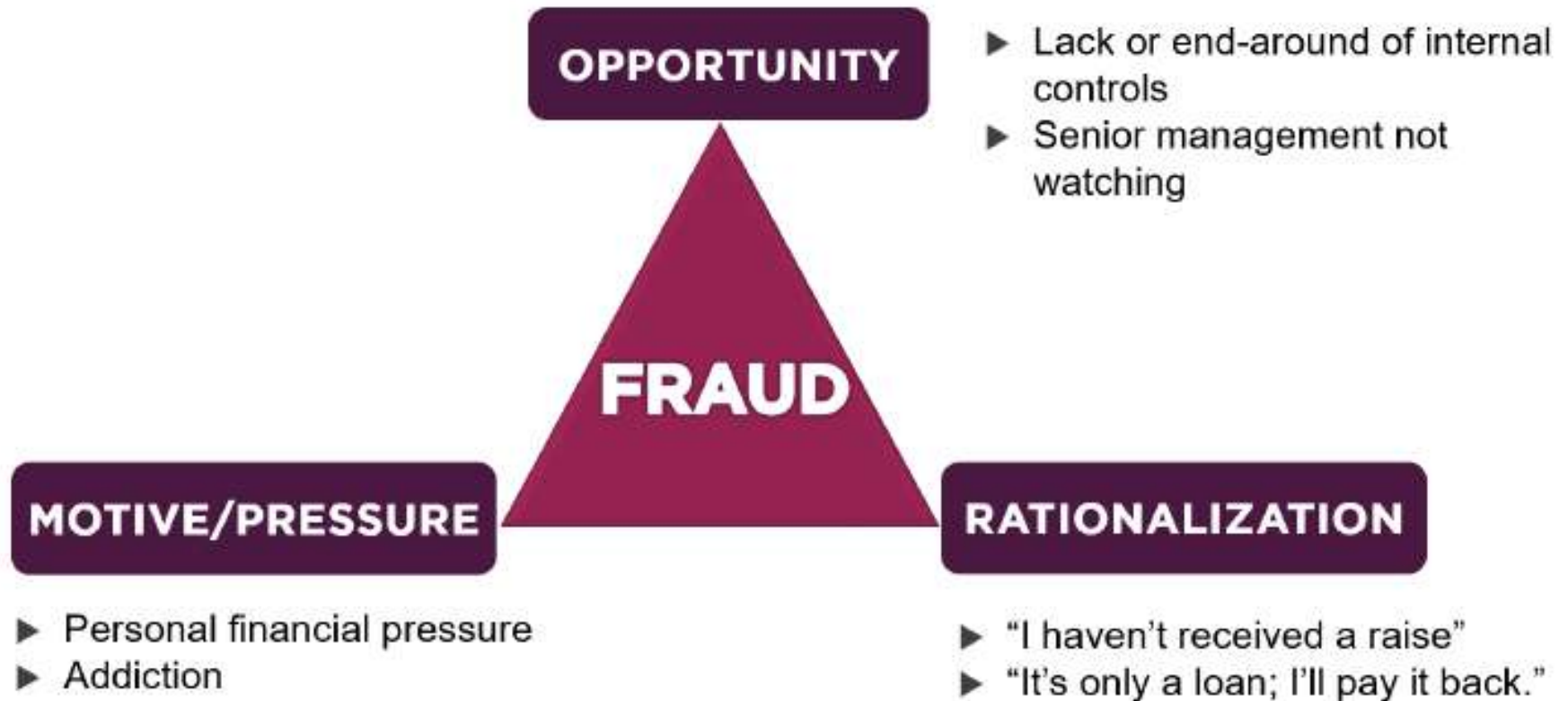
- Get your IT on board
 - Continued collaboration with legal contacts/department
- Communicate with employees
 - Training and communication
 - Updates to document retention policies
 - Provide explicit instructions on where and how to save company information
- Monitor compliance
 - Litigation hold notices



Internal Threats



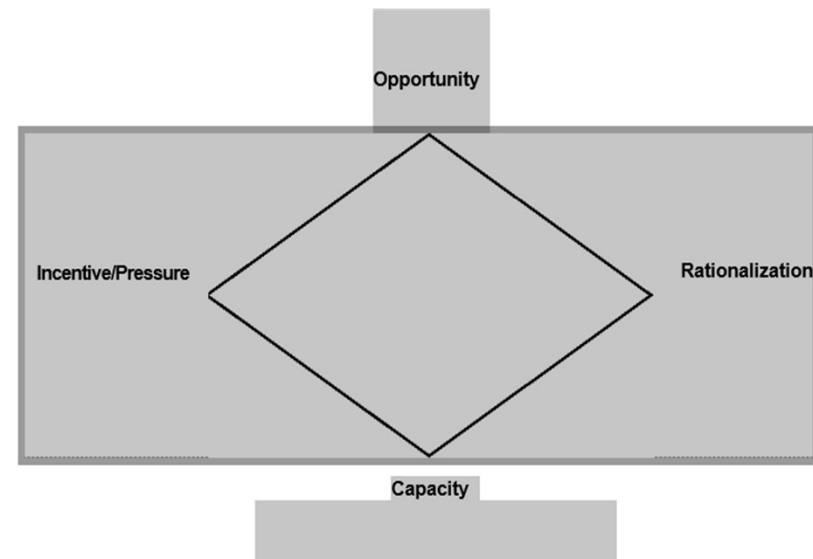
The Fraud Triangle



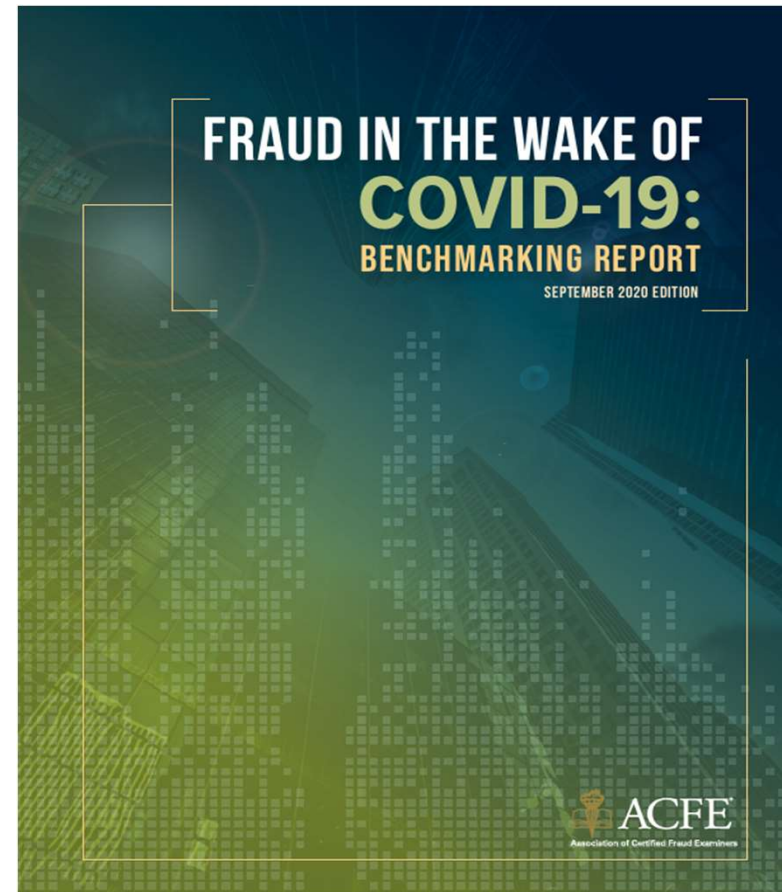
The Fraud Diamond

Wolfe, D., & D. R. Hermanson. (2004). The fraud diamond: Considering four elements of fraud. *The CPA Journal*, 74(12), 38-42.

- Introduced the 4th element of fraud - **Capacity**.
- The fraudster must have the capability to recognize the opportunity and to take advantage of it.
- Observable traits
 - position or function
 - authority
 - intelligence
 - exploit control weaknesses
 - understand the system
 - ego/confidence
 - ability to deal with stress/manage the fraud

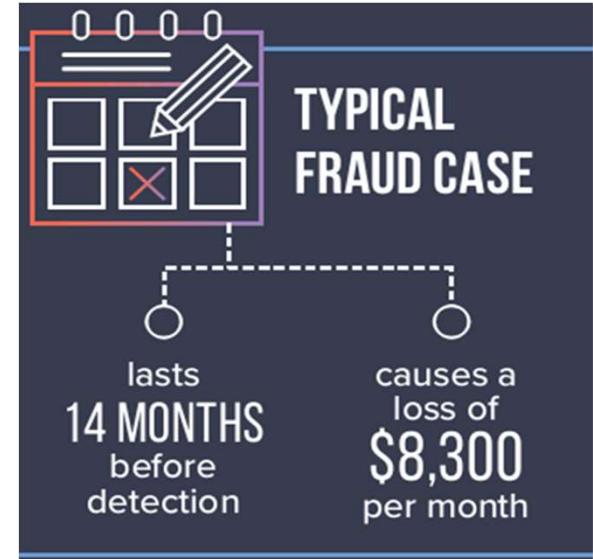


Association of Certified Fraud Examiners

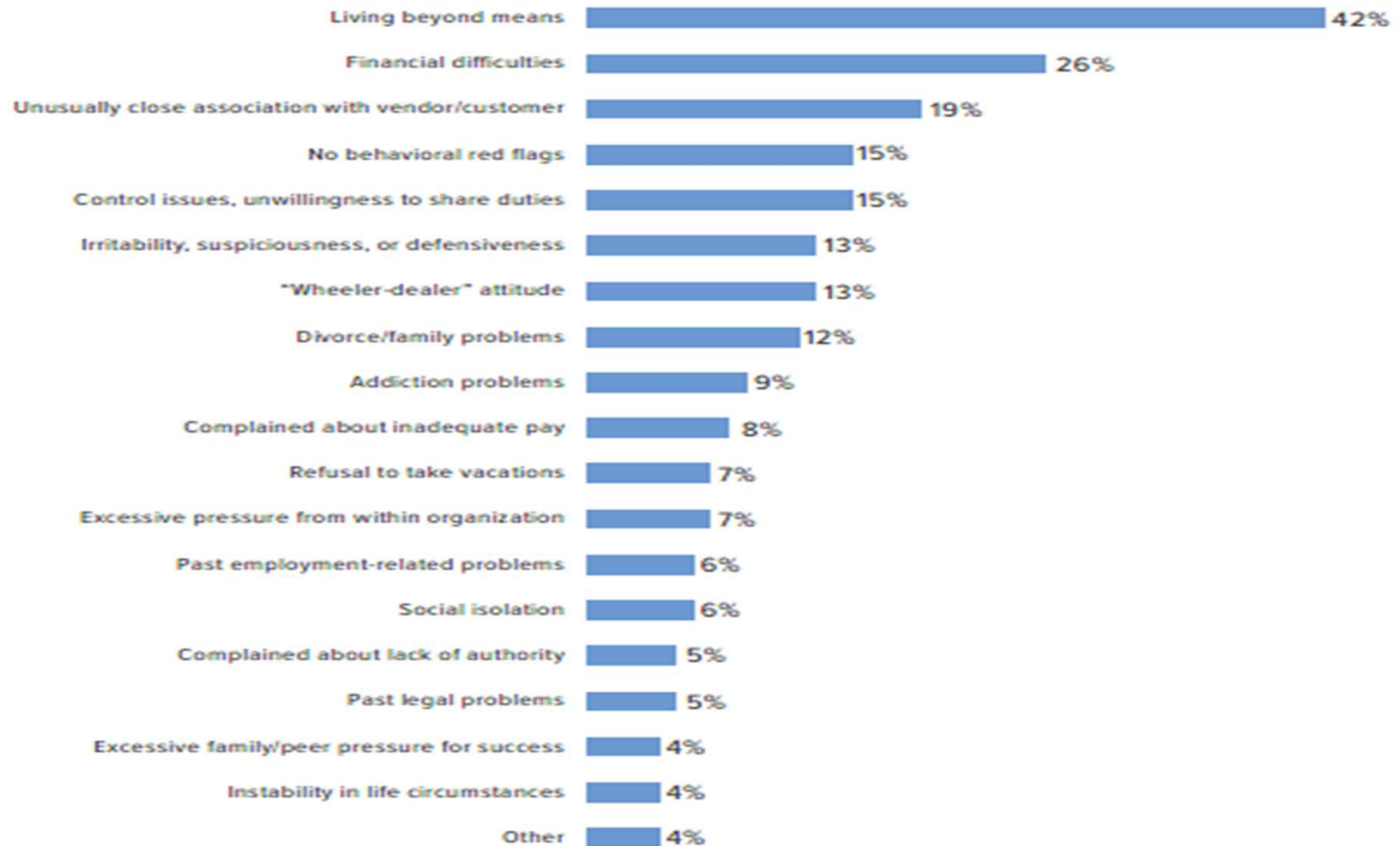


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Fraud Profile

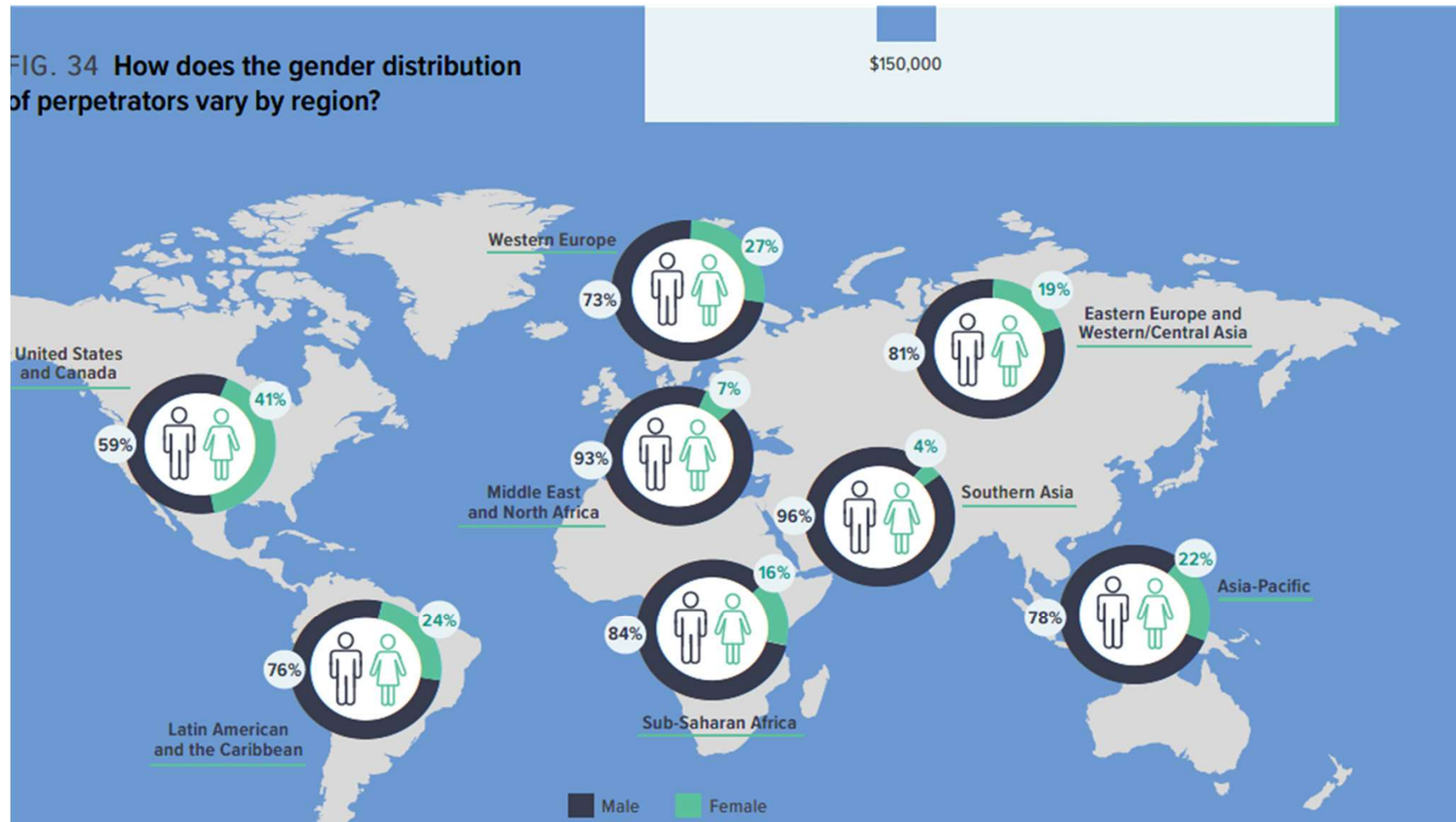


Red Flags



Gender Inequality

FIG. 34 How does the gender distribution of perpetrators vary by region?



How Occupational Fraud Is Concealed

Understanding the methods fraudsters use to conceal their crimes can assist organizations in more effectively detecting and preventing similar schemes in the future.

TOP 4 CONCEALMENT METHODS USED BY FRAUDSTERS



40%

Created fraudulent physical documents



36%

Altered physical documents



27%

Altered electronic documents or files



26%

Created fraudulent electronic documents or files



12% did not involve any attempts to conceal the fraud

INTERNAL PUNISHMENT

80% OF PERPETRATORS



RECEIVED SOME PUNISHMENT

Owners/executives are less likely to receive punishment

TERMINATION for FRAUD



Received NO PUNISHMENT



CIVIL LITIGATION

MEDIAN LOSS resulting in CIVIL LITIGATION



\$400,000



28% of cases resulted in civil litigation.

Of these cases:

41% resulted in judgment for the victim

36% settled

21% resulted in judgment for the perpetrator

CRIMINAL PROSECUTION

MEDIAN LOSS in cases referred to LAW ENFORCEMENT



\$200,000



59% of cases were referred to law enforcement

Of these cases:

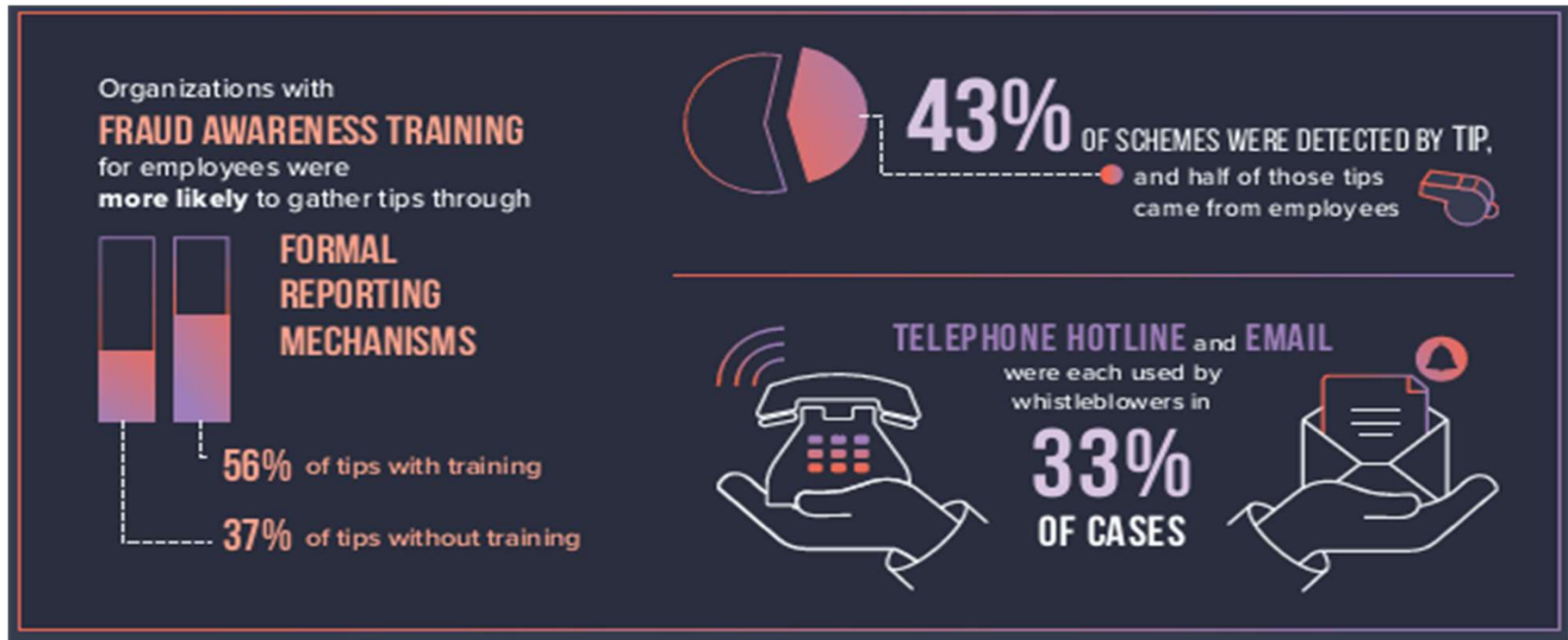
56% pleaded guilty/no contest

23% were convicted at trial

12% were declined prosecution

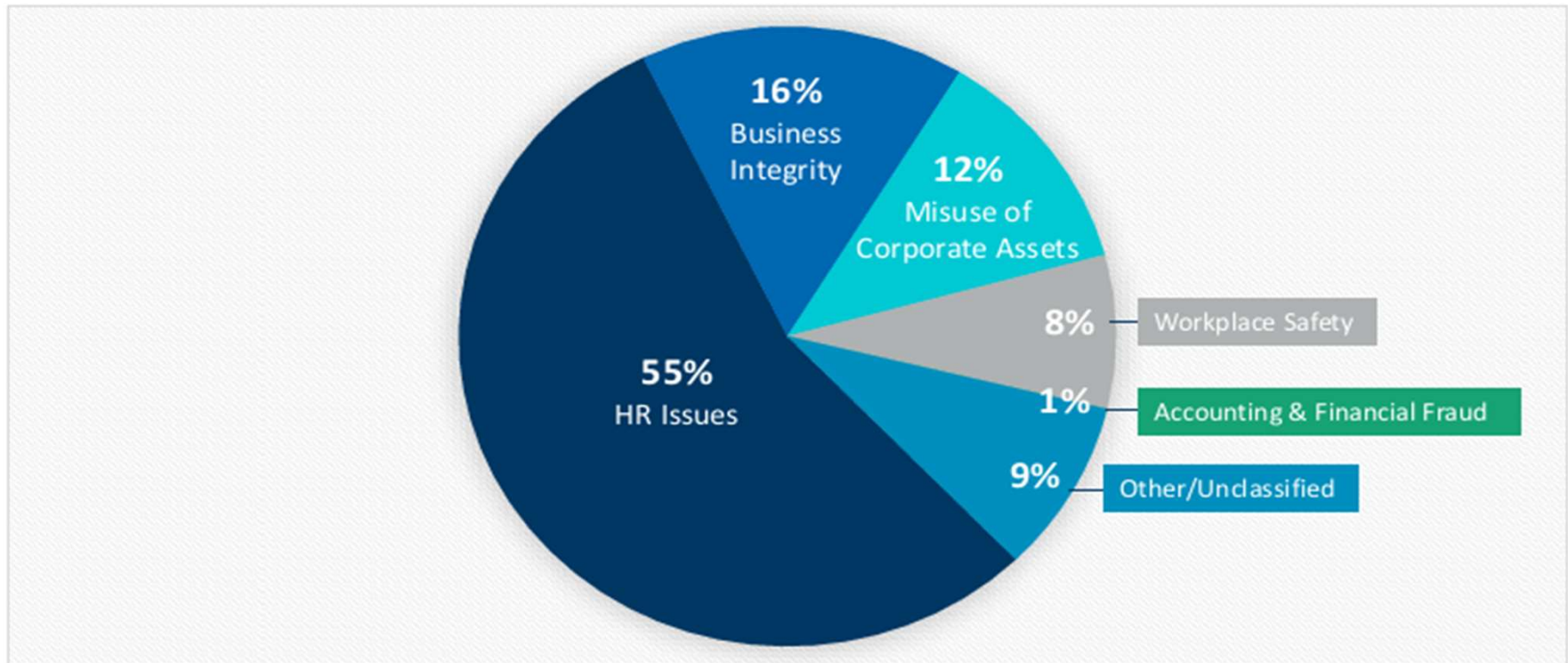
2% were acquitted

Detection



- Tips were the most common way occupational frauds were discovered.
- More than 40% of cases were uncovered by tips
~3X as many as the next-most common detection method.

Whistleblower Calls



- Source: “Evidence on the Use and Efficacy of Internal Whistleblowing Systems” report by Stephen R. Stubben of University of Utah and Kyle T. Welch of George Washington University. Report examined proprietary data from the world’s largest provider of internal WB systems, NAVEX Global. Results of nearly two million internal WB reports filed with over one thousand publicly traded U.S. firms.

Risk Oversight

Risk Management versus Risk Oversight Standards

- Caremark - a demanding test
“sustained or systemic failure of the board to exercise oversight—such as an utter failure to attempt to assure a reasonable information and reporting system exists.”

not merely inattention, but scienter
Oklahoma Firefighters and Good

- *But ... Numerous red flags (Wells Fargo)*
 - *Defendants ignore the bigger picture by addressing each of these “red flags” in piecemeal fashion...*
 - *when viewed collectively they support an inference that a majority of the Director Defendants consciously disregarded their fiduciary duties*
 - *is a substantial likelihood of directors’ oversight liability*



DOJ's Evaluation of Corporate Compliance Programs

- Updated June 2020
<https://www.justice.gov/criminal-fraud/strategy-policy-and-training-unit/compliance-initiative>
- Fundamental Questions
 - Is the corporation's compliance program well designed?"
 - Is the program being applied earnestly and in good faith?" (i.e., adequately resourced and empowered to function effectively?
 - Does the corporation's compliance program work (in practice)?"
- 2020 Signals
 - adequately resourced
 - formalized processes in place to continuously improve their effectiveness
 - effectively incorporated the use of data analytics.
- Prosecutors are instructed to probe whether the Program is
 - "paper program" or
 - "implemented, reviewed and revised, as appropriate, in an effective manner."
- **Data Analytics emphasis** - organization's need to have access to relevant data sources to allow for "timely and effective monitoring and/or testing of policies, controls, and transactions."

Observed/Projected Increases

ACFE - Benchmarking Study

Key Findings

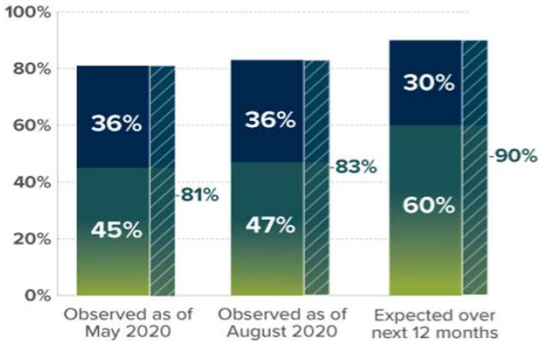
Top 5 Schemes

- Cyber Fraud
- Unemployment Fraud
- Payment Fraud
- Healthcare Fraud
- Vendor Fraud



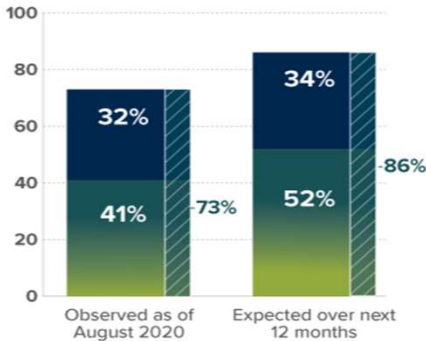
CHANGE IN SPECIFIC FRAUD RISKS

Cyberfraud

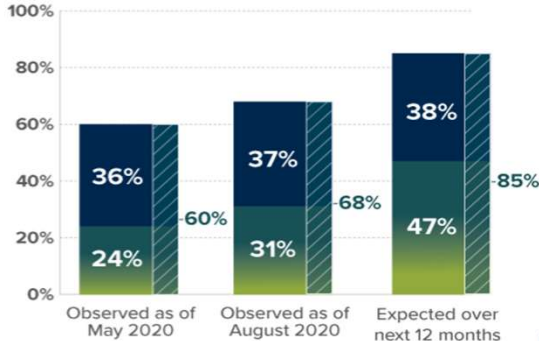


Unemployment fraud

Unemployment fraud was not included in the May 2020 benchmarking study.



Payment fraud

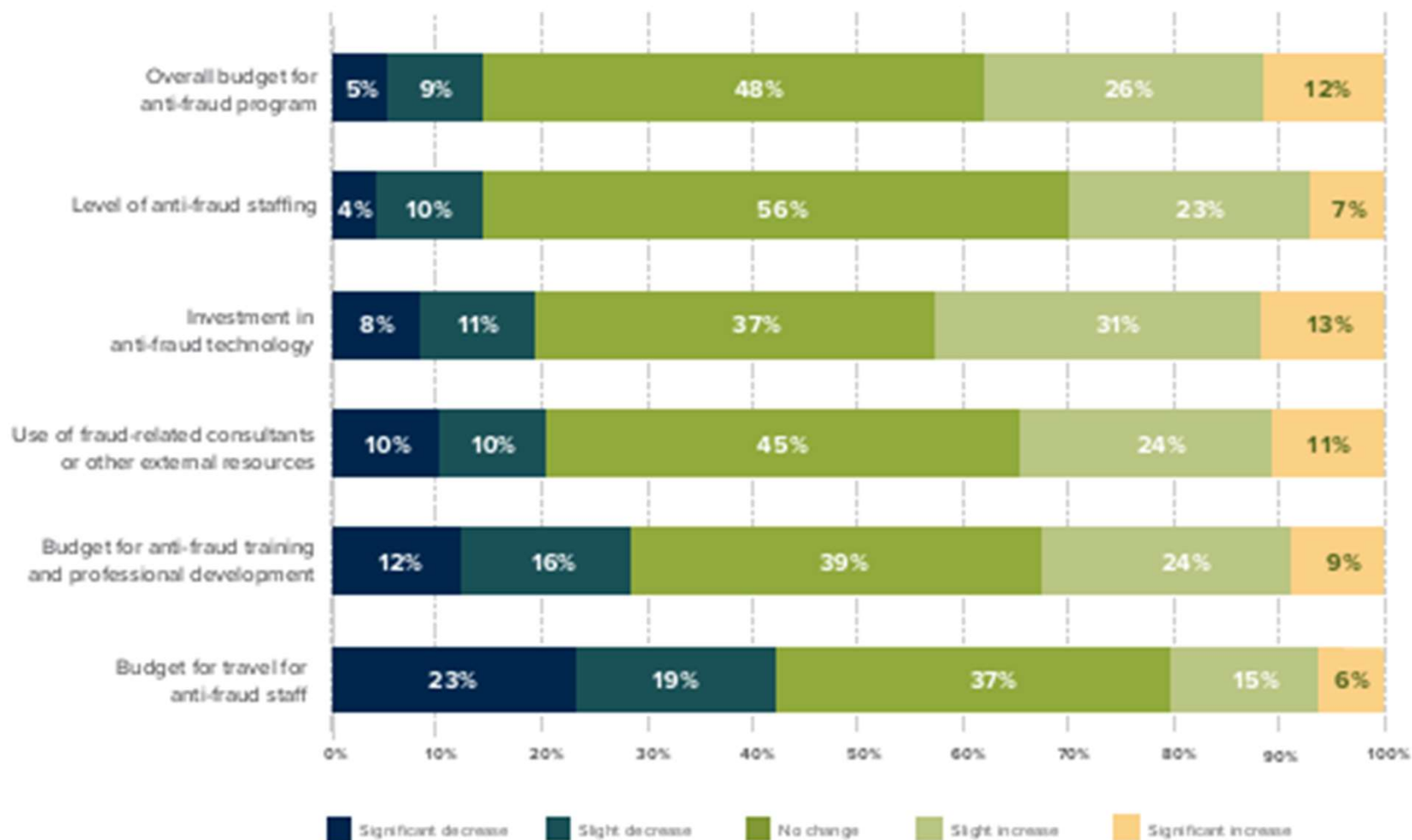


New Arrival

- **Coronavirus Aid, Relief and Economic Security Act (CARES Act)** - A \$2 trillion economic relief package delivers to protect the American people from the public health and economic impacts of COVID-19. The CARES Act provides *fast and direct* economic assistance for American workers, families, and small businesses, and preserve jobs for our American industries.
 - PPP - The Paycheck Protection Program authorizes up to \$659 billion toward job retention and certain other expenses.
- **Economic Injury Disaster Loan program** - SBA can provide up to \$2 million* to help meet financial obligations and operating expenses that could have been met had the disaster not occurred. The loan amount will be based on your actual economic injury and your company's financial needs, regardless of whether the business suffered any property damage. *A business may qualify for, both, an EIDL and a physical disaster loan.
- **Main Street Loans** - The Federal Reserve established this \$600 billion program to support lending to small and medium-sized for profit businesses and nonprofit organizations that were in sound financial condition before the onset of the COVID-19 pandemic.

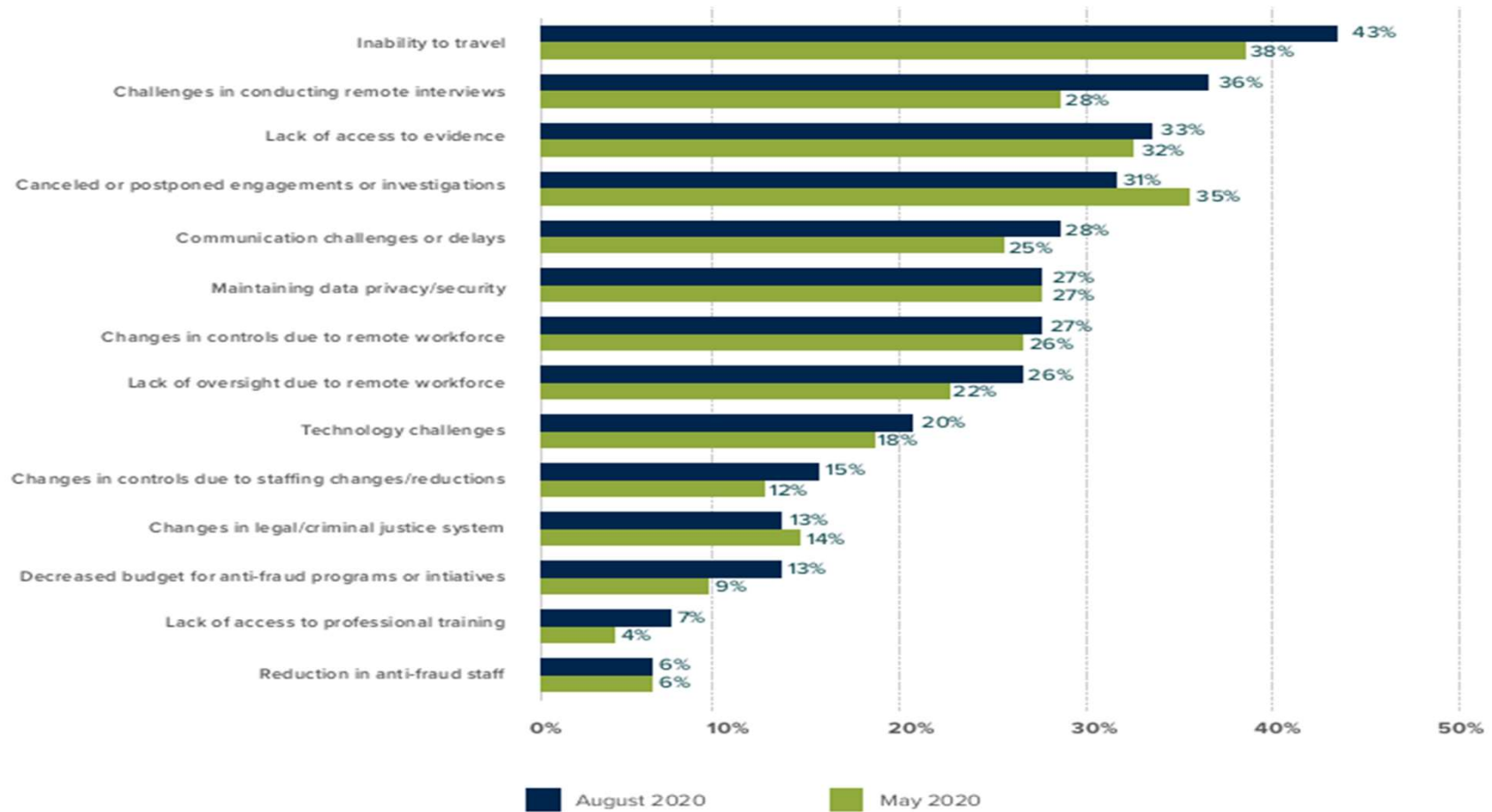
Exp. Changes in Anti-Fraud Budgeting and Resources

ACFE - Benchmarking Study



Challenges in Combatting Fraud

ACFE - Benchmarking Study



Compliance Program Checklist

- **TRAINING** --Provide ongoing anti-fraud training to all organization employees
- **REPORTING** – Implement an effective fraud reporting mechanism
- Increase **PERCEPTION OF DETECTION**
- Set the **TONE AT THE TOP** – Honesty and Integrity
- Perform fraud **RISK ASSESSMENTS** to proactively identify and mitigate vulnerabilities to internal and external fraud.
- Are strong anti-fraud **CONTROLS** in place and operating effectively?
- **INTERNAL AUDIT RESOURCES AND AUTONOMY** - operate without senior management’s undue influence.
- Review hiring policies.
- Implement **EMPLOYEE SUPPORT PROGRAMS** -- assist those struggling with addiction, mental/emotional health, family, or financial problems.
- **OPEN-DOOR POLICIES** where employees can speak freely about pressures, providing management the opportunity to alleviate such pressures before they become acute.
- Conduct regular, anonymous **SURVEYS** to assess employee morale (where permitted by law).

Key Takeaways



Key Takeaways



1. Communicate and Adapt

- Consistent and meaningful communication with employees.
- Adapt management styles, techniques, and environments to the changed environment.

2. Monitor

- Mere implementation of any program, guidelines or procedures is only the beginning. Constant monitoring and ensuring compliance is key. (AIM)

3. Leverage Technology

Questions?



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