Federal Bar Association

# Turning Square Corners

The Newsletter of the Federal Bar Association Qui Tam Section

**Winter 2026**

## Leadership Lane

**By Katherine J. Seikaly**

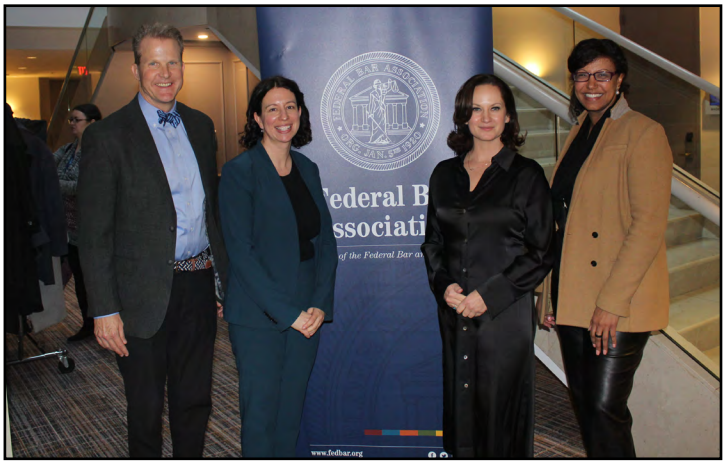
As we reflect on the past year and set priorities for the year ahead, I am honored to serve as the new Chair of the Federal Bar Association's Qui Tam Section. I look forward to building on the exceptional work of our past leaders, including Immediate Past Chair Megan Mocho, and to advancing our mission through robust educational programming, thoughtful new initiatives, and continued membership growth.

In the coming year, we will focus on creating more opportunities for members to connect with one another, including expanding our in-person events. We are also exploring ways to educate the judiciary on the unique aspects of the False Claims Act—an important theme that emerged from several of our recent roundtables.

This edition of *Turning Square Corners* highlights whistleblower avenues outside the False Claims Act. A special thank-you to Caleb Hayes-Deats (MoloLamken LLP), a member of our Education Committee, who secured interviews with two government officials from different whistleblower programs and co-authored an article with Caroline Veniero, an associate at MoloLamken LLP. We are also grateful to Jessica Magee, Chair of Holland & Knight's Securities Enforcement Defense Team, whose contribution on the SEC's whistleblower program draws on her experience as a former general counsel and former senior officer in the SEC's Division of Enforcement.

I look forward to seeing you at our Annual Hybrid Qui Tam Conference, returning February 19–20, 2026, with a welcome reception the evening before. As in years past, we will gather at the Hilton Capitol Hill Hotel in Washington, D.C. We have secured a remarkable keynote speaker and the program is packed with timely and valuable content.

Thank you to our leadership and members for making the FBA's Qui Tam Section a collaborative and professional forum for the government, relators, defense counsel, and the judiciary alike. Your engagement and support drive our work, and I'm excited for what we will accomplish together in the year ahead.



*Section leaders at the 2025 FBA Qui Tam Conference in Washington, D.C.*

## Also in This Issue

# FBA Member Spotlight: Kate Seikaly

**By Rachel V. Rose**

**As the fourth individual to take the helm as Chair of the Federal Bar Association's Qui Tam Section, tell us about yourself and the evolution of your False Claims Act practice.**

I am a self-proclaimed False Claims Act nerd. I started working on these cases as a junior associate and really enjoyed it. The work continued to come in and we got some really great results for our clients, and so I was able to get more and more experience and variety of cases. Then I joined the section and it has been great to develop relationships with lawyers on all sides of the FCA.

**What are your goals to continue raising the national profile of the Qui Tam Section and specific initiatives?**

The Section's primary goal is to serve our members, and we will continue to do so by providing resources for education, dialogue, and thought leadership. Our recent member survey showed that our members most value the roundtables that our Programming Committee coordinates, as well as the opportunity to hear the perspectives of practitioners from government attorneys and members of the "other side" of the bar. We are going to continue to look for ways to provide these benefits to our members. More in person networking events is one specific initiative we are hoping to focus on in the coming months.

**What is the most memorable False Claims Act case or motion that you have handled?**

I've been lucky to work on some very interesting and memorable cases, so it is hard to pick one. One recent case that stands out involved the oil and gas industry. It ended up being a very fun case, in part because there were about a dozen defendants named and we were lucky to have a great group of defense counsel, many of whom I knew from our annual conference. Aside from that, I had the opportunity to learn a whole new regulatory scheme that I knew nothing about, which is honestly one of the things I love the most about this work.

**What is the greatest challenge that you have experienced through the changes in Administrations throughout your career?**

Interesting question. One challenge has been predicting DOJ's enforcement priorities and helping clients navigate those. I'm specifically thinking of the policy memos that get issued with new administrations, and then sometimes rescinded or modified by the next.

**As this interview is in our Winter 2026 edition, what is your favorite Christmas Cookie or Holiday treat?**

Honestly, I have yet to find a sweet treat that I don't like!

*Kate is the Managing Partner of the Tysons office of Reed Smith. She focuses her practice on government and internal investigations, regulatory compliance and enforcement matters, and related litigation, with particular expertise in the False Claims Act (FCA). She has represented clients in a variety of industries, including health care, manufacturing, energy, defense, technology, communications, and financial services, in FCA matters brought by the federal and state governments, as well as private relators. She has successfully argued for dismissal and declination under the FCA and favorably settled parallel civil and criminal cases on behalf of her clients. She has served on the Executive Board of the Qui Tam Section since 2019, including as Secretary and Vice Chair.*

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***Rachel V. Rose, JD, MBA*** *(Houston, Texas), advises clients on compliance, transactions, government administrative actions, and litigation involving healthcare, cybersecurity, corporate and securities law, as well as False Claims Act and Dodd-Frank whistleblower cases. She also teaches bioethics at Baylor College of Medicine in Houston. Rachel holds a variety of leadership positions within the FBA, including serving on its National Board of Directors and can be reached through her website, www.rvrose.com.*

# Interview with Emma Mittelstaedt Burnham, Associate Director for Healthcare, Bureau of Competition, FTC and Daniel Glad, Director of Criminal Enforcement and the Procurement Collusion Strike Force, DOJ Antitrust Division

**By Caleb Hayes-Deats**

**Tell us about your legal career before joining the federal government.**

**DG:** After graduating law school, I worked in biglaw in the Chicago and D.C. offices of Latham & Watkins LLP. My practice was primarily a mix of criminal antitrust and other white collar investigations. After seven years at Latham, I left private practice for public service. My first job for the government was as Assistant Inspector General for the City of Chicago. At the Chicago OIG, I worked to root out fraud, waste, abuse, and corruption in Chicago's city government, with cases ranging from a garbage truck driver soliciting small bribes to an alleged coverup of a homicide committed by the mayor's nephew to the city's chief finance official fleeing the U.S. after serious fraud was discovered. It was, to be sure, a target-rich environment. In 2014, I made the jump from local to federal government, when I started working for the U.S. Department of Justice. DOJ has been my home since then.

**EMB:** I started my legal career as a white-collar defense associate in LA, followed by a two-year district court clerkship in Chicago. Then I made my way to DC, where I spent a few more years as a law firm associate and stumbled my way into a criminal antitrust matter—which, as it turned out, I found both fascinating and meaningful. So, when the Antitrust Division announced it was hiring in 2014, I applied and was so excited to get a position as a criminal trial attorney. (Dan and I started around the same time and did our new prosecutor training together!)

I ended up spending 11 years at the Antitrust Division, where most recently I had the privilege of serving as the criminal enforcement director. This fall I joined the FTC, where I'm focusing on civil antitrust violations in the healthcare industry.

**What initially drew you to antitrust law?**

**DG:** My path to antitrust law was a bit of luck and a bit of serendipity. When I started at Latham, I did a lot of document review, like most junior associates at that time. My doc review assignments were primarily in the cartel space, or in the follow-on civil litigation. I was good at doc review—I moved quickly, assimilated facts well, and had a talent (or luck) of surfacing hot docs. Based on that, when a Latham client came in with what looked like a cartel problem, the partner made me the managing associate on the matter. This turned out to be the first stage of what became the largest criminal antitrust investigation in U.S. history—the Auto Parts Investigation. For the next several years of my private practice career, I ran the day-to-day of that investigation, and then moved into more-senior roles in that and other cartel matters.

**EMB:** Like Dan, I didn't start off planning on a career in antitrust. As a law student, I was busy taking every class my school offered on criminal law, interning with the federal defender, and representing criminal defendants in federal court through one of the school's clinics. I envisioned a career that would involve time as both a public defender and a prosecutor. I have always believed deeply in our country's justice system, understanding that it requires committed, zealous, and principled advocates on both sides—and I think the highest ideal is a lawyer that can wear either hat with equal zeal and skill. I was focused on criminal law because I wanted my career to be about the fundamental rules at the moral core of our society.

It turned out it was harder than I had expected to get a federal defender job or a prosecutor job out of law school—but the experiences I was fortunate enough to get as an associate opened my eyes to the possibilities of an antitrust career and set me off on an equally rewarding, and infinitely challenging, path.

I've heard it said that antitrust is perhaps the only field where civil law is as important (if not more so) than criminal sanctions, because courts can impose civil remedies that preserve or restore competition across an entire industry (versus the more diffuse general deterrent effects of a criminal case). Antitrust is essential to our society; without guardrails to protect our free-market system, economic opportunity becomes an illusion and our democratic institutions can't exist. This basic truth is what drew me to antitrust and what keeps me passionate about it well into the second decade of my practice.

**What has been the most memorable case of your career so far?**

**DG:** This is a **really** hard question for me to answer. No matter where I was in my career, I always found some part of my work fascinating. At Latham, working on behalf of clients, I enjoyed the hunt for the truth. At the Chicago OIG, the characters (and the counsel) I encountered were truly one of kind and very, very "Chicago." Since coming to DOJ, whether working the line at the Antitrust Division or at the U.S. Attorney's Office, or in the variety of supervisory roles I have held, the importance of the work has stuck with me. Is this a cop out? Yeah, it's probably a cop out.

**EMB:** I've worked on a rewarding range of cases tackling

rampant, long-running price-fixing conspiracies in big sectors of the U.S. economy. The best part has always been being part of incredible teams of lawyers, economists, paralegals, and law enforcement agents.

But if I had to single out the most memorable case, it's a smaller one that didn't get much attention—a case in which a trial team I worked on obtained convictions and prison sentences against owners of school bus transportation companies who blatantly rigged bids and overcharged school districts in Puerto Rico, stealing federal No Child Left Behind Act money that should have gone to help students whose families lived below the poverty line. When we talk about antitrust, we tend to talk about cartels and monopolization by well-known companies at the visible center of our economy—but antitrust violations also frequently take the form of less-noticed corruption that can (and does) occur across all levels and sectors of our economy and that hurts people in real, tangible ways—whether it's consumers who pay higher prices, small businessmen who struggle to compete because everyone else has formed a cartel, or kids who can't afford basic school supplies.

**What are your current responsibilities?**

**EMB:** I am a recent transplant to the FTC's Bureau of Competition, which (along with DOJ) enforces civil antitrust laws, and my work specifically focuses on anticompetitive conduct in the healthcare space. I'd previously led an investigation into price fixing of generic drugs at the Justice Department and supervised investigations and prosecutions of other healthcare-related antitrust crimes (including conspiracies to fix wages for healthcare workers). At DOJ I started to see that while criminal law could address some of the competition problems we were seeing, civil enforcement had an essential role to play too, and so I was very excited to have the opportunity to join the FTC and work with its teams investigating civil antitrust violations across the industry.

**DG:** I'm currently the senior career official overseeing all criminal antitrust enforcement in the Antitrust Division, both public sector (via the DOJ's Procurement Collusion Strike Force) and in the private sector. I am responsible for supervising all four criminal prosecuting sections and the prosecutors and other professionals in DC, New York, Chicago, and San Francisco. I review and approve all criminal antitrust charges. I also work with leadership to plot strategy, revise policies, and set priorities. But the most-important part of my job—and the part I find most rewarding—is to support the outstanding work our folks are doing around the country, whether by finding resources, building partnerships with law enforcement agencies, or solving problems to allow the people on the line—the people who do the real work—to stay focused on building cases.

**In your view, what are the top antitrust problems currently facing the country?**

**DG:** AAG Slater has made clear that "kitchen-table issues" are a priority for her: healthcare, food supply and agriculture, and the taxes all Americans pay. Those markets are some of the primary ones in which we have active criminal investigations. We're also looking at the ways antitrust crimes are being carried out in 2025, whether that's the method conspirators use to communicate or collude, both of which are driven by changes in technology. That can take the form of ethereal communications apps, algorithmic price fixing, and AI. I expect that over the next few years, our public work in those markets, and attacking those modalities, will address the lack of or distortions in competition and the affordability crisis.

**EMB:** Healthcare, of course.

Also, I agree with Dan's view that sophisticated parties who are knowingly violating the antitrust laws (and here I would expand that beyond just criminal violations to offenses that would be charged as a civil violation) unsurprisingly find increasingly sophisticated ways to seek to evade detection and scrutiny by the government. This is something I am very attuned to from my past life as a criminal enforcer and have continued to think about in my current role. That includes considering ways to offer greater clarity, predictability, and incentives for complainants, victims, and whistleblowers—the people and companies who are best positioned to see and report potential antitrust violations (whether of a criminal or civil nature) to the agencies.

**In July, the Antitrust Division and U.S. Postal Service jointly announced a new whistleblower program. Can you tell us about the program and what led to its creation?**

**DG:** The Antitrust Division and the United States Postal Service, through its law enforcement arms, the U.S. Postal Inspection Service ("USPIS") and the U.S. Postal Service Office of Inspector General ("USPS-OIG")) have joined together to create the "Whistleblower Rewards Program." The Whistleblower Rewards Program provides potential monetary rewards to whistleblowers who voluntarily provide the Antitrust Division with original information about federal criminal antitrust violations or federal crimes targeting or affecting state, local, and federal procurement. The information must lead to a resolution that includes a criminal fine of at least $1 million in order for the whistleblower to receive a reward. The rewards paid under the Whistleblower Rewards Program are fully funded by recovered criminal fines, using existing statutory authority. If the Antitrust Division determines that a whistleblower reward is appropriate, the presumption is that the total reward will be between 15 and 30% of the recovered criminal fine.

**EMB:** Dan has covered this well, but I'll just add (based on my past work at DOJ) that one consideration in standing up the program was how it could augment the Antitrust Division's longstanding leniency policy. Under that policy, the first company or individual to report their own participation in a criminal antitrust conspiracy, and meet a set of criteria including cooperation with cases against co-conspirators and making restitution to victims, receives nonprosecution protection and detrebled damages in follow-on litigation. We'd been hearing for a number of years that the program

was no longer sufficiently attractive to potential applicants because even single damages in follow-on litigation, coupled with exposure to antitrust scrutiny across multiple jurisdictions for cross-border conduct, had become too high a cost to bear (even in exchange for keeping the company's executives out of jail and avoiding a corporate criminal fine). DOJ couldn't change those external disincentives—but it could add incentives, like a financial reward for individual whistleblowers. The whistleblower program creates additional pressure on the race to win leniency, with companies now needing to be concerned that someone from their company or elsewhere may report the conspiracy before they do and give DOJ the evidence it needs to bring a case, thereby taking leniency off the table.

**What are the respective roles of the Antitrust Division and the Postal Service in the new program?**

**DG:** In one way, the roles each of us play are well established—prosecutors and law enforcement officers working together to investigate and where appropriate, charge violations of federal law. That is something that each of my colleagues and I do every day. The agencies we are working with on Whistleblower Rewards Program, the U.S. Postal Inspection Service ("USPIS") and the U.S. Postal Service Office of Inspector General ("USPS-OIG") are some of the finest investigative agencies out there. And USPIS is actually the oldest federal law enforcement agency in the U.S., celebrating its 250th anniversary in 2025. The Antitrust Division has worked many cases with USPIS and USPS-OIG in the past, including in areas like as asphalt, concrete, and generic pharmaceuticals. USPIS and USPS OIG are currently working active investigations across the broad spectrum of the U.S. economy, including healthcare, road building, infrastructure, construction supplies, automotive equipment and supplies, mail delivery, chemicals, and office and school supplies.

The new program takes our work to the next level by strengthening the incentives for those with knowledge of criminal offenses to report to law enforcement. For the new Whistleblower Rewards Program, both the Antitrust Division and the USPS agency have to concur that a whistleblower is preliminarily eligible under the terms of our MOU, something that is happening in the early stages of new investigations. Our respective shops will work together on the investigation, and after a resolution that results in a criminal fine or other penalty of $1 million or more, the USPS agency will remit the agreed-upon reward to the whistleblower.

The Whistleblower Rewards Program expands upon the Antitrust Division's long-standing efforts to detect and prosecute cartels and criminal collusion by incentivizing individuals to report specific, credible, and timely information about illegal agreements to fix prices, rig bids, and allocate markets, as well as other federal criminal violations that impact, distort, or undermine the competitive process or market competition.

The Whistleblower Rewards Program will materially change the constellation of incentives for lawful behavior and will be an important part of the Antitrust Division's efforts to increase the likelihood of detection or deter criminal offenses at the outset. This program joins other Antitrust Division investigative tools, such as voluntary self-disclosure programs, data analytics and covert investigative techniques (for example, wiretaps, undercover agents, and cooperating human sources).

By offering monetary rewards, the Whistleblower Rewards Program provides strong financial incentives for insiders to come forward, creating a new pipeline of actionable leads from people with firsthand knowledge of criminal antitrust and procurement fraud offenses.

**What kinds of information does the Antitrust Division want whistleblowers to submit?**

**DG:** We want your tips and leads, your information about price fixing, bid rigging, market allocation, criminal monopolization, procurement collusion, and obstruction related to any of these crimes. There needs to be a competition or antitrust hook, but that is a very broad area. What do you know, how do you know it, and do you have any documents or other evidence?

Whistleblowers or their attorney can report their information via our dedicated web portal, available at justice.gov/antitrustrewards. We have a team that reviews and assesses submissions, and if the tip or lead is shows promise, investigators reach out to gather more information. We've already received hundreds of complaints, opened multiple grand jury investigations based on whistleblower tips, and preliminarily qualified multiple whistleblowers. I expect that we will have more to say about our specific work in 2026.

**Whistleblowers are not eligible for awards under the new program unless the violations they report "affect[] the Postal Service, its revenues, or property." Can you give examples of violations that meet those criteria?**

**DG:** I'd caution your readers and any whistleblowers: do not read this too narrowly. And keep in mind the breadth of the U.S. Postal Service. Indeed, the USPS is the only part of the federal government that reaches every single home six days a week. That means that many things can "affect" the USPS, from rigging bids to USPS to sending price-fixed prices or products through the mail to sending or receiving invoices or payments through the mail. The scope is incredibly broad, and one only needs to look at the wide variety of cases our law enforcement partners at USPIS and USPS-OIG have handled in the past to understand just how involved the USPS remains in the American economy.

**How can whistleblower counsel best assist your agencies' efforts?**

**DG:** Whistleblower counsel best assist us by doing what they do best: taking complicated and often disconnected sets of facts, filtering and sieving for relevance, and presenting the facts in a distilled, organized fashion. That workstream alone can turbocharge our initial assessment and decision on whether to proceed with a criminal investigation. Then, if an investigation is opened, whistleblower

counsel can be instrumental in working with their clients in advance of any interviews to help organize thoughts, refresh recollections, and focus our conversations on what's relevant for a criminal offense. Whistleblower counsel can also be helpful in client education, explaining the process and timing. In particular, I've seen whistleblower counsel help clients understand that the DOJ cannot share every aspect of its thinking on investigations or step in the process.

**EMB:** There's not currently a whistleblower rewards system in place for civil antitrust violations, but a few things come to mind nonetheless.

First, even if there's no reward system in place, we still want to encourage insiders to come forward with potential antitrust issues. As Dan flagged, DOJ and the FTC both have online complaint portals for that purpose, and that can be a good place to start. We also often receive letters or other communications, including requests to meet to present potential antitrust concerns. We're happy to intake that kind of information, and our teams will thoroughly outline what type of confidentiality protections we can provide—we know it can be a difficult decision to come forward and confidentiality is top of mind for that reason.

Second, civil antitrust issues also often constitute other federal violations for which whistleblower rewards and protections may be available, such as securities fraud or False Claims Act violations. In that situation, counsel should think expansively about what type of rewards may be available and consider approaching multiple agencies; engaging with the antitrust agencies can be mutually beneficial to enforcers and to the whistleblower and we certainly welcome that type of cooperation.

**You both focus on industries—healthcare and procurement—that have historically been hotbeds for False Claims Act litigation. Have you seen significant overlap between antitrust and False Claims Act cases during your careers? What antitrust issues should FCA attorneys look out for?**

**EMB:** As I alluded to earlier, yes, I've often seen overlaps between antitrust and FCA matters, in both the healthcare and procurement spaces. I am absolutely not an FCA expert but I know this much: when there's price fixing that raises costs to federal healthcare programs, or bid rigging that raises prices the federal government pays, that's likely to implicate the FCA and turn into parallel investigations. It might not be obvious why two different parts of DOJ would both investigate essentially the same conduct, but there's a good reason—Department policy encourages prosecutors to look at all available avenues to hold wrongdoers accountable and compensate the federal government as a victim, even when that restitution might overlap with a criminal fine.

I'll give you a couple different examples of cases I worked on at DOJ. First, as an example in the procurement space—DOJ's Antitrust and Civil Divisions ran successful parallel investigations into a bid-rigging conspiracy targeting contracts to supply fuel to U.S. military bases in South Korea. Those investigations resulted in three types of cases and corporate monetary settlements: criminal antitrust charges and plea agreements (alongside individual indictments); civil antitrust settlements for violations of Section 4A of the Clayton Act (compensating taxpayers as the victim of anticompetitive conduct); and FCA settlements.

I want to highlight something about those cases that's relevant to our discussion today. As DOJ noted in its press releases announcing those settlements, the civil investigation resulted from a whistleblower lawsuit filed under the FCA's qui tam provisions.

Second, a healthcare example: Alongside the generic drugs price-fixing investigation that I mentioned earlier was a parallel civil investigation that uncovered violations of the False Claims Act and Anti-Kickback Statute. There, the government's allegations were that the manufacturers' price-fixing conspiracy raised the price of drugs for federal healthcare programs and beneficiaries, and those manufacturers paid and received compensation prohibited by the AKS. That investigation resulted in resolutions with numerous generic drugmakers and significant penalties imposed.

When counsel comes across situations like these, the best thing to do is disclose to all relevant enforcers. When you file a qui tam, call the Antitrust Division at the same time. That allows the teams to coordinate (ultimately reducing the burden on the whistleblower) and also maximizes opportunities for rewards and, for a culpable whistleblower, to avoid prosecution.

**When you're not trust-busting, what do you like to do in your spare time?**

**DG:** Antitrust crime never sleeps, so neither do we. But in my spare time, my wife and I love cooking and trying new recipes, lately mostly coming from Samin Nosrat's new cookbook. I'm an avid griller and smoker, and I even cooked our Thanksgiving turkey over charcoal on a rotisserie. I also love living close to Rock Creek Park, where on the weekends I will often go for a long bike ride to get some fresh air, clear my head, and get ready for the week ahead.

**EMB:** Like Dan, I enjoy a nice long bike ride. Also, I'm teaching a class at NYU Law School this spring semester! It's a seminar on antitrust crimes and at least one class will definitely be devoted to whistleblower policies and detection theories. This marks my first time teaching since I TA'ed an undergrad political science class as a law student, and I'm looking forward to a new challenge and getting students excited about antitrust. As I mentioned earlier, that's something I missed out on myself, so I'm hoping to do better for the next generation.

***Caleb Hayes-Deats*** *is a partner at MoloLamken LLP, where he represents companies and individuals in False Claims Act and other types of whistleblower litigation. He has been recognized as a "Rising Star" in D.C. by the National Law Journal and in New York by Super Lawyers. Previously, he served as an Assistant U.S. Attorney in the Southern District of New York.*

# FinCEN Whistleblower Program 101

**By Caroline Veniero and Caleb Hayes-Deats**

The Treasury Department's Financial Crime Enforcement Network (FinCEN) administers a whistleblower program that accepts reports about alleged violations of anti-money laundering (AML) laws and U.S. economic sanctions. If the tip contains original information and leads Treasury or the Department of Justice to impose civil penalties of over $1 million, then whistleblowers are entitled to at least 10% of those penalties, and they can receive up to 30%.

FinCEN has not yet issued regulations providing guidance on the program. Nor has it publicly announced the payment of any whistleblower award. But civil penalties for AML and sanctions violations can be astronomical, creating the possibility of proportionate awards. For example, in November 2023, a successful FinCEN settlement resulted in a $3.4 billion civil penalty.[1] Just 10% of that amount—the minimum statutory award under FinCEN's program—would be $340 million.

**What Can Whistleblowers Report?**

FinCEN's program covers reports of AML and sanctions violations. When Congress originally enacted the program in 2021, the program covered only violations of the Bank Secrecy Act (BSA), which requires banks and other financial institutions to adopt procedures to prevent money laundering. In 2022, in response to the war in Ukraine, Congress amended the program to include violations of sanctions imposed under the International Emergency Economic Powers Act (IEEPA), the Foreign Narcotics Kingpin Designation Act, and certain provisions of the Trading with the Enemy Act.

The BSA requires banks and other financial institutions to monitor transactions they process for money laundering and to report certain kinds of transactions. Financial institutions violate the BSA if they willfully fail to obtain required information about customers who hold accounts, to monitor accounts for potential money laundering, or to report suspicious transactions to FinCEN. Willfully failing to implement an effective AML program results in a penalty of $25,000 "for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues."[2]

Whistleblowers can also report violations of U.S. economic sanctions. Under IEEPA and other statutes, the President can identify an "unusual and extraordinary threat" to U.S. national or economic security and delegate authority to the Office of Foreign Assets Control (OFAC) to block or freeze transactions to deal with the threat.[3] OFAC commonly blocks transactions with specified individuals or entities. A U.S. person violates economic sanctions whenever they facilitate or cause someone else to facilitate a prohibited transaction. Foreigners can also violate sanctions by causing U.S. individuals and entities to engage in prohibited transactions, even unwittingly. For example, OFAC takes the position that, if a foreigner transacts with a blocked person in U.S. dollars, and U.S. correspondent banks process that transaction, the foreigner has violated sanctions by causing the correspondent bank to engage in a prohibited transaction. Penalties for willfully violating U.S. sanctions can be up to double the amount of the prohibited transaction.[4]

**Who Can Be a Whistleblower?**

Almost any person who voluntarily discloses original information about a violation of AML laws or economic sanctions can be a FinCEN whistleblower. That can include non-U.S. citizens, current or former employees of a corporation engaged in wrongdoing, and persons employed by the target's competitors. A "whistleblower" can even be a group of people "acting jointly."[5] Certain people, however, cannot receive monetary awards, including government employees acting in the "normal course" of their job duties, those convicted of a crime in connection with the reported conduct, and those who knowingly provide false information during the investigation.

Whistleblowers must provide original information about a relevant violation of law. Original information can be anything derived from the whistleblower's independent knowledge that is not already known to the government or publicly available. But the statutory definition also covers information derived from a whistleblower's independent analysis of publicly available data.

**How Does FinCEN Protect Whistleblowers?**

FinCEN's whistleblower program includes several measures designed to protect whistleblowers from retaliation. First, the statute creating the program prohibits discharging, demoting, suspending, blacklisting, harassing, or discriminating "in any other manner" against whistleblowers who disclose conduct that they reasonably believe violates a relevant law.[6] Whistleblowers who experience retaliation can file a complaint with the Secretary of Labor. If the Labor Secretary does not act on the complaint within 180 days, the whistleblower can file a complaint in federal court and pursue their claim before a jury. Depending on the precise nature of the retaliation, they may be entitled to reinstatement, doubled back pay, and other compensatory damages like litigation costs, expert fees, and even attorney's fees.

Whistleblowers can also submit their tips anonymously through legal counsel and proceed through the investigation without disclosing their identity. While a whistleblower must eventually disclose their identity to the government before receiving the award (so the government can ensure they are eligible for an award), even then, the government must treat the identity of the whistleblower as confidential under the Privacy Act.

**How Will the Award Be Calculated?**

As noted, qualifying whistleblowers can receive between 10% and 30% of the civil penalties imposed, so long

**FinCEN continued on 15**

# Checking In on SEC Whistleblower Program

**By Jessica Magee**

**The SEC's Whistleblower Program in a Nutshell**

Section 21F, titled "Whistleblower Incentives and Protection," is a set of provisions within the Securities Exchange Act of 1934 under which—among other things—the Securities and Exchange Commission ("SEC") is authorized to pay awards to whistleblowers who provide the agency with original information about violations of federal securities laws, whether based on the person's own independent knowledge or analysis. The SEC's Whistleblower Program was promulgated in July 2010 under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111–203, 124 Stat. 1376 (2010), (codified at 15 U.S.C. § 78o), "Dodd-Frank Act") to both encourage timely reporting of suspected securities violations and protect whistleblowers from retaliation for making such reports.

Among other things, the Dodd-Frank Act strengthened and expanded the whistleblower program existing under the Sarbanes-Oxley Act by establishing a mandatory bounty program under which whistleblowers can receive 10% to 30% of the proceeds of collected judgments in excess of $1 million. *See* 15 U.S.C. §§ 78u-6(b).

The SEC reports that, since its inception, the Whistleblower Program has awarded more than $2.2 billion to over 440 whistleblowers, recouped more than $6.3 billion in sanctions, and returned $1.5 billion to harmed investors. See SEC, 2024 Annual Report to Congress on the Whistleblower Program (2024) ("2024 Annual Report"). In the 2024 fiscal year alone (ended September 30, 2024), the SEC awarded $255 million to 47 company insider and outsider whistleblowers, such as market observers and investors. *See id.*

**Whistleblower Rule 21F-17 Discourages Impediments to Proactive Reporting**

One of the most significant components of the SEC's Whistleblower Program is Exchange Act Rule 21F-17 (the "Rule"). This Rule prohibits any action that interferes with an individual's ability to communicate directly with the SEC about potential securities law violations. 17 C.F.R. § 240.21F–17(a). Specifically, Rule 21F-17 provides:

> No person may take any action to impede an individual from communicating directly with the [SEC] about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement.

17 C.F.R. § 240.21F–17(a).

Though the Rule was promulgated in 2010, the SEC did not enforce it until April 2015. *See* SEC, Companies Cannot Stifle Whistleblowers in Confidentiality Agreements (Apr. 1, 2015). At that time, the SEC initiated a settled administrative proceeding alleging that language of a company's confidentiality agreement improperly prohibited employees from disclosing facts underlying internal investigations without legal department consent, which it alleged could have "a potential chilling effect on whistleblowers' willingness to report illegal conduct to the SEC."

Because it considers whistleblowing a cornerstone of its enforcement program, the SEC has adopted a strong policy favoring both the prophylactic and reactive protection of whistleblowers to encourage tips. In recent years, the SEC under Gary Gensler filed a number of actions to enforce the Rule using an expansive interpretation. *See, e.g.*, Release No. 92237, 2021 WL 2581714 (June 23, 2021) (investment firm's compliance manual violated the Rule where the manual required employees to obtain approval from the firm's legal or compliance department before initiating contact with SEC) and Release No. 94703 (April 12, 2022) (finding Rule violation where Respondents removed employee's administrative privileges on company computer *after* employee had submitted SEC tip without any indication Respondents sought to impede employee's communication with SEC). In 2024 alone, the SEC brought eleven enforcement actions against companies who allegedly impeded or could have chilled whistleblower communications – the largest number in a single year and more than double the 2023 total. *See* 2024 Annual Report, *supra*.

Many of those actions involved restrictive language in agreements which were found to constitute an "impediment" under the Rule without alleging that individuals were actually impeded from reporting concerns. For example, in an action against a broker-dealer and investment adviser ("Adviser"), the SEC imposed an $18 million penalty (the largest to date) after finding the Adviser used liability release agreements requiring customers to keep the facts underlying certain credit or settlement payments confidential unless responding to SEC inquiries. Release No. 99344 (January 16, 2024). Though there were no allegations that any customer had actually been prevented from disclosure, and despite a carveout relating to responding to SEC inquiries, the SEC stated that the language of the agreements "prohibited clients from affirmatively reporting to the Commission staff" and constituted Rule violations. *Id*.

Generally speaking, historical enforcement of the Rule has looked at language included in company confidentiality agreements, non-disclosure agreements, liability releases, settlement agreements, employment agreements, consulting and client agreements, severance agreements, and even internal company policies, such as codes of conduct, employee handbooks, training materials and compliance manuals.

**A Look Ahead**

Companies and counsel are watching to see how the SEC will approach enforcement of the Rule going forward. Current SEC Chair Paul Atkins, who previously served as an SEC Commissioner between 2002 and 2008 and as a member of the agency's staff before that, has articulated

an intent to focus enforcement efforts on serious fraud and investor harm while scaling back on enforcement actions founded on technical violations. Paul S. Atkins, Comm'r, U.S. Sec. & Exch. Comm'n, Keynote Address at the 25th Annual A.A. Sommer Jr. Lecture on Corporate, Securities & Financial Law (Oct. 9, 2025) (emphasizing focus on cases involving "genuine harm and bad acts" to ensure SEC resources are utilized in a manner that is "commensurate with [the] level of investor harm").

To date, the SEC has filed any new Rule 21F-17 enforcement actions since Chair Atkins rejoined the SEC in April 2025. The SEC has, however, made an award of approximately $6 million to joint whistleblowers who provided new information that led to the opening of an examination and provided a roadmap for a resulting enforcement action. SEC Press Release, SEC Awards $6 Million to Two Whistleblowers (Apr. 2025).

Additionally, on March 26, 2025, Congress reintroduced the SEC Whistleblower Reform Act of 2025 ("Reform Act"), a bipartisan effort to expand anti-retaliation protections and streamline award determinations. As described, if enacted, the Reform Act would purport to:

- Protect whistleblowers who report violations to a direct superior from retaliation, as opposed to just those who report directly to the SEC;
- Ensure claims and awards are timely processed; and
- Clarify that whistleblowers cannot waive their rights through a pre-dispute arbitration agreement.

S. 1149, 119th Cong. at Sec. 2(a)(2)(A)(v), Sec. 3, Sec. 4(a) (2025).

Ultimately, the SEC Whistleblower Program's core mission—protecting investors and promoting market integrity—ensures its durability, with both the SEC and Congress confirming that the program will remain a regulatory focus. Moving forward, companies ought to remain vigilant in their understanding of the Program's—and the Rule's—expectations and prohibitions and be mindful of not taking steps that could be seen as limiting individual's rights to blow the whistle, though when or if new enforcement under the Rule is in the works or will be a feature of this administration is unknown.

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# Notable Case Synopses

**By Grace Swindler and Devan Eaton**

## Rule 9(b) and Discovery

***U.S. ex rel. Sedona Partners LLC v. Able Moving & Storage Inc.*, 146 F.4th 1032 (11th Cir. July 25, 2025)**

The Eleventh Circuit held that Rule 9(b) does not forbid the use of discovery-obtained information to meet the heightened pleading standard of a motion to dismiss once discovery has begun. The relator, a transportation service provider, alleged that several other transportation service providers fraudulently won government contracts through a fraudulent scheme carried out between 2008 and 2018. The complaint was initially dismissed for lack of specificity under Rule 9(b). After filing a second amended complaint with allegations based on documents obtained during discovery, the district court struck the specific allegations under Rule 12(f) on the grounds that they relied on discovery materials. The Eleventh Circuit reversed this decision, noting that the district court had improperly used Rule 12(f) and failed to analyze whether the material met the Rule's criteria. The Eleventh Circuit clarified that nothing in the rule's text restricts relators from using discovery materials in amended pleadings, reaffirming that courts cannot broaden the Federal Rules of Civil Procedure. Because the district court did not address whether the complaint satisfied Rule 9(b) with the details found in discovery, the Eleventh Circuit remanded the case for further evaluation.

## Damages

***U.S. ex rel. Behnke v. CVS Caremark Corp. et al.*, --F. Supp.3d-- (E.D. Pa. Aug. 19, 2025)**

The United States District Court for the Eastern District of Pennsylvania trebled damages and imposed civil penalties above the statutory minimum on the Caremark defendants' Medicare Part D fraud scheme, holding that the total award was proportionate to the seriousness of the misconduct and did not violate either the Eighth Amendment's Excessive Fines Clause or due process. The relator brought a qui tam action against pharmacy benefit manager (PBM), alleging that the defendants knowingly caused Medicare Part D sponsors to misrepresent the amounts beneficiaries paid for prescriptions, leading to the submission of false claims to the Centers for Medicare & Medicaid Services (CMS). After a bench trial, the district court found the defendants liable and assessed actual damages of $95 million before trebling and penalties. After post-trial briefing, the district court trebled damages to $285 million, imposed $4.87 million in civil penalties based on 513 false claims submitted to CMS, and awarded post-judgment interest, entering a final judgment of $289,873,500. The court declined to impose minimum penalties, emphasizing the seriousness of the fraud, the defendant's awareness that CMS rules prohibited unreported spread on Part D drugs, and its efforts to conceal its profits. The court further held that the total award did not violate the Excessive Fines Clause or due process because it was proportional to the scale and gravity of the misconduct.

## Public Disclosure

***U.S. ex rel. Sam Jones Company, LLC v. Biotronik, Inc. et al.*, 152.F.4th 946 (9th Cir. Sept. 10, 2025)**

The Ninth Circuit held that the public disclosure bar did not apply to the relator's complaint as it had alleged "new and material information." The relator, an LLC comprised of two former employees of the defendant, alleged that a medical devices company, its sales representative, and a physician engaged in a kickback compensation arrangement based upon an improper financial relationship in violation of the False Claims Act, Stark Law, and Anti-Kickback Statute (AKS). Prior to the relator's suit, a newspaper published an article detailing the strategies one of the defendants used to increase their marketing share, including hiring physicians' relatives. The district court granted the defendants' motion to dismiss the relator's complaint under the public disclosure bar and denied the relator's motion for leave to amend. On appeal, the Ninth Circuit reviewed the information provided in the newspaper article and found that the article alleged general strategies the medical device company used to increase market share, without detailing per sale commissions, or mentioning AKS or Stark Law. In the complaint, the relator alleged "new and material information," such as the familial ties between a specific sales representative and physician and the commissions' structure. The Ninth Circuit reversed the dismissal and remanded the case to the district court consistent with its findings.

## Public Disclosure & Rule 9(b)

***U.S. ex rel. Winnon v. Lozano*, 146.F.4th 1197 (D.C. Cir. Aug. 12, 2025)**

The D.C. Circuit Court held that that the relator's presentment claim was precluded by the public disclosure bar and insufficiently pled under Rule 9(b). The relator, a former employee of one of the defendants, alleged that seventeen defendants, including skilled nursing facilities (SNF), their operators, a therapy service provider, and several physicians, engaged in a fraudulent scheme to unlawfully profit from Medicare and Medicaid reimbursements. Specifically, the relator alleged that the defendants paid kickbacks for patient referrals, operated sham medical directorships, and inflated therapy services to maximize reimbursements. The district court dismissed

the complaint and the relator appealed. The D.C. Circuit Court held that the relator's allegations against the therapy service provider were precluded by the public disclosure bar because they were "substantially similar" to those previously disclosed in an earlier action and related public documents. The circuit court also found that the relator failed to qualify as an "original source" since she neither provided specific, pre-disclosure information to the government nor possessed independent knowledge that materially added to the record. The circuit court then found that the relator failed to allege claims with particularity as to the SNF defendants, determining that the relator failed to tie any inducement or statistical anomalies to specific false claims submitted to the government. Accordingly, the court held that her claims rested on speculation rather than the concrete indicia of fraud required.

## Anti-Kickback Statute

***U.S. v. Regeneron Pharmaceuticals, Inc.*, 793 F. Supp.3d 261 (D. Mass. Aug. 4, 2025)**

The U.S. District Court for the District of Massachusetts held that, following the First Circuit's decision requiring but-for causation for AKS-based FCA claims under the 2010 amendment, the government could file a second partial summary judgment motion and reopen discovery on its false-certification claims. The government alleged that a pharmaceutical company used a patient-assistance foundation, the Chronic Disease Fund (CDF), to funnel money that reimbursed patients' copays for its drug, Eylea. Following the First Circuit's decision, the government moved for leave to file partial summary judgment under its false certification theory and to reopen discovery on a limited basis. The district court found that the First Circuit's clarification regarding but-for causation significantly altered the legal landscape and that allowing the government to pursue an alternative false-certification theory under these circumstances was fair and would promote efficient resolution of the case. The court also determined that the complaint sufficiently alleged facts to support a false-certification theory and that reopening discovery on a limited basis would not unduly prejudice the defense.

## Falsity

***U.S. ex rel. Streck v. Eli Lilly et al.*, 152.F.4th 816 (7th Cir. Sept. 11, 2025)**

The Seventh Circuit affirmed a jury verdict finding Eli Lilly ("Lilly") liable under the False Claims Act for its drug pricing practices. The relator alleged that Lilly falsely deflated drug prices reported to the Centers for Medicare & Medicaid Services (CMS) in violation of the Medicaid Drug Rebate Program (MDRP) rules. Specifically, the relator alleged that Lilly underreported its Average Manufacturer Price (AMP) by excluding post-sale price increase amounts that wholesalers were required to remit back to Lilly. At trial, Lilly was found liable for underreporting its drugs' AMP to CMS, thereby reducing the rebates owed to the government. Lilly appealed, challenging the district court's determination of falsity and the jury's findings on scienter and materiality. The Seventh Circuit affirmed the district court's summary judgment rulings and the jury's verdict. On falsity, the court held that Lilly's interpretation of the AMP regulations was not objectively reasonable and contravened the plain text and purpose of the statutes, regulations, and MDRP agreement. The court concluded that manufacturers must adjust AMP when post-sale arrangements affect the price actually realized and therefore may not exclude "price increase values" from AMP. On scienter, the court found sufficient evidence to support the jury's verdict, citing Lilly's failure to document its AMP methodology, inconsistent disclosures to CMS, and submission of its methodology in a format CMS had expressly rejected. These facts supported a finding that Lilly knowingly submitted false claims. On materiality, the Seventh Circuit determined that AMP representations were material because the MDRP's core purpose is to control Medicaid costs and AMP directly determines rebate obligations. The court further held that the government's continued payments did not undermine materiality, as those payments were consistent with alternative explanations recognized in Escobar. The court also explained that it was "wary" of imputing "actual knowledge" to the government, as CMS may not have been aware of the financial consequences of Lilly's AMP calculations.

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# Plot Twist: A Shifting SEC Cybersecurity Landscape

**By Rachel V. Rose, JD, MBA**

**Overview**

First, let's begin with recent insights from a recent outgoing U.S. Securities and Exchange Commissioner.

> We're reducing corporate accountability. In my view, deterring misconduct is a public good. Corporate actors come into compliance with the rules because failing to do so has costs. **But we're moving away from the deterrence framework: dropping litigations, lower enforcement numbers, lower civil penalties, presidential pardons, allowing mandatory arbitration, meaning no-class action private enforcement of shareholder rights. Our whistleblower cadence has really ground down to almost a halt.** (emphasis added).[1]

What immediately stands out is the reduced deterrence, lower enforcement and whistleblower investigations and subsequent recoveries. As the numbers show, 2025 illustrates the lowest number of awards in the past six years and the highest level of denials. Through September 4, 2025, the United States Securities and Exchange Commission (SEC) issued 17 awards and 84 denial orders – equating to a denial rate of approximately 83%.[2] Comparatively, "SEC's fiscal year 2024 annual report to Congress revealed that over 14,000 of the 24,980 whistleblower tips received in 2024 could be attributed to two individuals."[3]

These numbers do not necessarily paint the full picture. Why? Because in 2024, the SEC received 24,980 whistleblower tips, of which 14,000 were submitted by two individuals, which built on their previous 7,000 submissions in 2023.[4] Not only did it divert SEC resources to address this obnoxious issue, but it may also cause very legitimate whistleblower claims to be glossed over out of fatigue.

What follows is a synopsis of cybersecurity items related to SEC enforcement.

**Cybersecurity**

This brings us to cybersecurity – one of the greatest potential areas of risk and important areas of enterprise risk management for everyone from environmental services to the C-suite to boards of directors. In August 2023, the SEC issued its Final Rule – *Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure*, 88 Fed. Reg. 51896 (Aug. 4, 2023), emphasizing the importance of cybersecurity risk management and disclosure.[5] "Materiality is a core consideration in determining whether any risk from cybersecurity threats exist, including as a result of any previous cybersecurity incidents."[6] Strengthening cybersecurity safeguards, which include technical, administrative and physical, as well as integrating cybersecurity risk management into corporate governance is not new. The Cybersecurity Infrastructure and Security Agency (CISA), in April 2018, published its *Framework for Improving Critical Infrastructure Cybersecurity*,[7] which is a useful resource regardless of whether or not a person falls into one of the 16 critical infrastructure sectors.

Companies continue to list cybersecurity as its "biggest risk"[8] and the need for adequate cybersecurity measures has been echoed by the SEC. "Cyber security and data security are the top risks facing organisations, with more than eight in 10 respondents identifying it as a leading threat, according to a survey of nearly 900 Chief Internal Auditors across the UK and Europe conducted by the Chartered Institute of Internal Auditors (Chartered IIA)."[9] These insights are relevant since many companies are also traded on U.S. exchanges and subject to U.S. securities laws because they are often considered foreign private issuers (FPI).[10]

And now for the "plot twist." On November 20, 2025, the SEC announced that it had dismissed the civil enforcement action against SolarWinds and its Chief Information Security Officer.[11] The case, *Securities and Exchange Commission v. SolarWinds Corp. and Timothy G. Brown*, Case No. 1:23-cv-09518-PAE (S.D.N.Y. Oct. 30, 2023) presented two main prongs of potential violations: (1) disclosure after the 2020 Sunburst attack, which impacted thousands of private and government entities; and (2) material misstatements to the market about its cybersecurity compliance and safeguards.

On July 18, 2024, Judge Engelmayer, in his 107-page opinion, left intact the "pre-Sunburst" disclosures related to the SEC's claims of securities fraud based on a "Security Statement" surrounding various cybersecurity practices that was published on SolarWinds' website.[12] The "post-Sunburst" claims, as well as those relating to internal controls over financial reporting, were dismissed with prejudice for not meeting the Fed. R. Civ. P. 12(b)(6) threshold.

Interestingly, the U.S. Government Accountability Office (GAO), issued a statement that "[t]he cybersecurity breach of SolarWinds' software is one of the most widespread and sophisticated hacking campaigns ever conducted against the federal government and private sector." Yet, SolarWinds ultimately saw the SEC's case against it dismissed.[13]

So, what is the SEC's position on cybersecurity moving forward? As stated in the joint stipulation for dismissal, "the Commission's decision to seek dismissal is 'in the exercise of discretion' and 'does not necessarily reflect the Commission's position on any other case.'"[14] A variety of Government agencies, including the U.S. Department of Health and Human Services, U.S. Department of Justice and U.S. Federal Trade Commission are pursuing enforcement actions related to cybersecurity. Additionally, FINRA recently issued a cybersecurity alert and

published a checklist, which is a great resource regardless of the size of the company to assess and ensure that the confidentiality, integrity and availability of the data remains intact.[15] Therefore, companies should not drop their guard and eschew required cybersecurity technical, administrative and physical safeguards, as well as being mindful of disclosure requirements to the SEC.

**Conclusion**

In sum, while the course of the SEC's enforcement actions remains unknown, what is known is that class actions and enforcement actions by state and federal agencies are being brought with vigor and are costly. An effective compliance program is a material consideration, and boards are recognizing this fact. Additionally, cybersecurity is a material concern and risk management, governance and compliance are all factors being considered by banks and insurance companies alike. Given the unpredictability of cybersecurity cases with the SEC, who knows, the next "plot twist" may be the SEC's announcement of its biggest settlement ever.

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**Endnotes**

[1] D. Harty, *Exit Interview … Outgoing SEC Commissioner Caroline Crenshaw*, Politico (Dec. 9, 2025), https://www.politico.com/news/magazine/2025/12/09/stock-market-sec-commissioner-exit-interview-00682316?utm_source=securitiesdocket.beehiiv.com&utm_medium=newsletter&utm_campaign=biblical-oil-firm-is-first-to-adopt-mandatory-arbitration-clause&_bhlid=fc0b21428dc84a9633dab7765ff2296a569552bf.

[2] *See* https://www.sec.gov/enforcement-litigation/whistleblower-program/final-orders-whistleblower-award-determinations (last visited Dec. 11, 2025).

[3] *Evaluating the SEC's Rising Whistleblower Denial Rate* (Dec. 8, 2025), https://www.jdsupra.com/legalnews/evaluating-the-sec-s-rising-2861011/#_ftn5.

[4] *Securities and Exchange Commission Office of the Whistleblower Annual Report to Congress for Fiscal Year 2024*, https://www.sec.gov/files/fy24-annual-whistleblower-report.pdf.

[5] *See* https://aboutblaw.com/915 (Aug. 4, 2023).

[6] R. Rose, T. Dziekanowski, A. Watkin-Child, *SEC Cybersecurity Rule Leans on Materiality and Reasonableness*, Bloomberg Law (Aug. 18, 2023), https://news.bloomberglaw.com/us-law-week/sec-cybersecurity-rule-leans-on-materiality-and-reasonableness.

[7] CISA, *Framework for Improving Critical Infrastructure Cybersecurity*, Version 1.1 (Apr. 16, 2018), https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf (adopting the National Institute of Standards and Technology framework).

[8] ICAEW Insights, *Cyber security biggest risk as businesses reel from major attacks* (Sept. 23, 2025), https://www.icaew.com/insights/viewpoints-on-the-news/2025/sep-2025/cyber-security-biggest-risk-as-businesses-reel-from-major-attacks.

[9] *Id*.

[10] SEC, *Accessing the U.S. Capital Markets – A Brief Overview for Foreign Private Issuers* (Feb. 13, 2013), https://www.sec.gov/divisions/corpfin/internatl/foreign-private-issuers-overview.shtml#:~:text=A%20foreign%20company%20will%20qualify,tests%20are%20discussed%20further%20below..

[11] SEC, *Litigation Release No. 26423* (Nov. 20, 2025), https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26423.

[12] Dkt. 125 (Jul. 18, 2024).

[13] GAO, *SolarWinds Cyberattack Demands Significant Federal and Private-Sector Response* (infographic) (Apr. 22, 2021), https://www.gao.gov/blog/solarwinds-cyberattack-demands-significant-federal-and-private-sector-response-infographic.

[14] *See* https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26423 (Nov. 20, 2025).

[15] FINRA, *Cybersecurity*, https://www.finra.org/rules-guidance/key-topics/cybersecurity (last visited Dec. 11, 2025).

# DOJ Whistleblower Pilot Program Turns One

**By Caroline Veniero and Caleb Hayes-Deats**

In August 2024, the Department of Justice's Criminal Division launched a three-year pilot program to incentivize whistleblowers to report corporate crime. That program—the Corporate Whistleblower Awards Pilot Program, or CWAPP—was designed to encourage corporate compliance and fill in gaps left by whistleblower programs run by the U.S. Securities and Exchange Commission, Commodity Futures Trading Commission, Financial Crimes Enforcement Network, and Internal Revenue Service.

**Where We Started**

The Biden administration launched the pilot program to incentivize whistleblowers to report original, non-public information about corporate crime to DOJ. When the program initially launched, it accepted information relating to four "subject areas": foreign corruption and bribery, kickbacks or bribes to domestic public officials, crimes by financial institutions, and health care fraud involving private insurance plans. Whistle¬blowers were encouraged, but not required, to report internally first.

At the same time DOJ announced the new whistleblower program, it also revised its guidance on voluntary self-disclosures by corporations. If a corporation received an internal complaint from a whistleblower, self-reported the same issue to DOJ within 120 days, and cooperated with the DOJ to investigate and remediate the issue, then DOJ would afford the corporation a rebuttable "presumption of declination." That meant that DOJ likely would not charge the corporation with a crime, although the "presumption" was rebuttable, such as where leadership participated in the underlying crime.

DOJ also announced criteria a whistleblower had to meet to qualify for an award. First, the whistleblower must provide complete and truthful information and cooperate in any investigation through trial. Second, they must not have "meaningfully participated in the criminal activity they reported, including by directing, planning, initiating, or knowingly profiting from that criminal activity." Finally, the whistleblower's assistance must lead to a successful forfeiture exceeding $1 million in value.

If the whistleblower meets those criteria, they could be entitled to up to 30% of the first $100 million in forfeiture (i.e., up to $30 million), and up to 5% of the next $100 to $500 million (i.e., up to another $20 million). DOJ has advertised a "presumption" that a whistleblower will receive 30% of the first $10 million in net forfeiture proceeds. The DOJ has said that whistleblower awards can be adjusted upward based on the significance of the report and the witness's cooperation, or downward based on a whistleblower's delay in reporting or potential culpability short of "meaningful participation" in the criminal activity. But the ultimate award—and indeed, whether the whistleblower receives any award at all—is subject to the DOJ's sole discretion. Additionally, a whistleblower award cannot be paid until individual victims of the criminal conduct have been fully compensated.

**What's Changed and What's Stayed the Same**

During the initial months of President Trump's second administration, experts regarded CWAPP's fate as "uncertain."[1] But in May, DOJ announced its intention to continue the pilot program through its three-year term and only then to "determine whether the program will be extended in duration or modified in any respect."[2]

DOJ also expanded the program's reach. First, it broadened the potential health care violations to include fraud against public health care programs (though not fraud that could be pursued in a qui tam action). Consistent with the administration's policy priorities, the DOJ also extended the program to additional subject areas beyond the initial four, including:

- Violations by corporations related to international cartels or transnational criminal organizations, including money laundering, narcotics trafficking, Controlled Substances Act violations, and other crimes
- Violations by corporations of federal immigration law
- Violations by corporations involving material support of terrorism
- Corporate sanctions offenses
- Trade, tariff, and customs fraud by corporations
- Corporate procurement fraud[3]

The DOJ also bolstered its voluntary self-disclosure policy. Corporations that comply with the policy will now receive a declination, rather than just a "presumption" of declination.

Otherwise, the program has stayed largely the same. Whistleblowers must still give complete and truthful information, assist with the investigation, and avoid "meaningful participation" in the reported criminal conduct. And they are still encouraged to report internally first.

Given the program's recency, many questions about how DOJ will administer it remain unanswered. DOJ's program guidance states that, when a whistleblower disclosure results in a final action, the Department will publish a Notice of Covered Action on its website.[4] As of writing, no such notices have been posted. Because DOJ has not yet taken any final actions or paid any awards based on whistleblower disclosures, observers have not yet had an opportunity to see how DOJ will implement its written guidance in practice.

**How Companies Can Adapt**

CWAPP's creation and expansion broadens corporate risk by creating significant incentives for employees and others to report misconduct, whether it is real or perceived. To mitigate that risk, companies should implement robust internal reporting programs. Those programs should be publicized and encouraged as part of the corporate culture. Employees will not use internal reporting programs if they do not know of them and regard them as credible. The internal investigation process following an internal report should also be sufficiently responsive

and streamlined to allow the company to decide whether to disclose the underlying issue a whistleblower has reported within the 120-day deadline imposed by DOJ.

**Endnotes**

[1] David B. Anders, Ralph M. Levene & Randall W. Jackson, *White-Collar and Regulatory Enforcement: What Mattered in 2024 and What to Expect in 2025*, Harv. L. Sch. Forum on Corp. Gov. (Feb. 5, 2025), https://corpgov.law.harvard.edu/2025/02/05/white-collar-and-regulatory-enforcement-what-mattered-in-2024-and-what-to-expect-in-2025/.

[2] *Department of Justice Corporate Whistleblower Awards Pilot Program*, DOJ (May 12, 2025), https://www.justice.gov/criminal/media/1400041/dl?inline.

[3] Matthew R. Galeotti, *Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime*, DOJ (May 12, 2025), https://www.justice.gov/criminal/media/1400046/dl?inline.

[4] *Criminal Division Corporate Whistleblower Awards Pilot Program*, DOJ (May 12, 2025), https://www.justice.gov/criminal/criminal-division-corporate-whistleblower-awards-pilot-program.

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## FinCEN continued from 7

as the penalties exceed $1 million. The Treasury Secretary has discretion to determine whether the whistleblower receives more than the statutory minimum award. The Secretary will consider the significance of the whistleblower's original information, the degree of assistance the whistleblower provided, and the Treasury Department's "programmatic interest" in deterring certain conduct.

If a whistleblower (or their counsel) is dissatisfied with determinations made by the Treasury Secretary, they can appeal to the "appropriate court of appeals."[7] Such appeal must be filed within thirty days of the Secretary's determination. However, the statute contains an exception for appeals of "the determination of the amount of an award if the award was made in accordance with subsection (b)," which establishes the minimum and maximum awards.

**Reporting Without Counsel?**

Whistleblowers who wish may report violations without the assistance of counsel. Unrepresented whistleblowers cannot, however, report their information anonymously.[8] Such whistleblowers also face a greater risk that FinCEN could deny an award. Under the statute, any whistleblower who fails to submit information "***in such form*** as the Secretary, in consultation with the Attorney General, may, by rule, require" may ***not*** receive an award.[9]

Ultimately, FinCEN's whistleblower program remains in its infancy. FinCEN has not yet issued regulations explaining how it will implement the program or pay awards, although such regulations are widely expected to mirror the SEC's given the similarities between the statutory schemes. The lack of formal guidance notwithstanding, the size of the potential awards has already generated significant interest and resulted in the filing of whistleblower tips.

**Endnotes**

[1] Year in Review for Fiscal Year 2024 at 8, FinCEN (June 18, 2025), https://www.fincen.gov/system/files/shared/FinCEN-Infographic-Public-2025-508.pdf.

[2] 31 U.S.C. §5321(a).

[3] 50 U.S.C. §§1701, 1702(a)(B).

[4] 50 U.S.C. §1705(b)(2).

[5] 31 U.S.C. §5323(a)(5).

[6] 31 U.S.C. §5323(g)(1).

[7] 31 U.S.C. §5323(f).

[8] 31 U.S.C. §5323(d)(2)(A).

[9] 31 U.S.C. §5323(c)(2)(C) (emphasis added).

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