



Webcast: The Patchwork Quilt of Whistleblower Programs

May 8, 2025

GIBSON DUNN

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MCLE Certificate Information

MCLE Certificate Information

- Approved for 1.0 hours General PP credit.
- CLE credit form must be submitted by **Thursday, May 15th**.

Form Link: https://gibsondunn.qualtrics.com/jfe/form/SV_6rjx71IAIUEjaSy

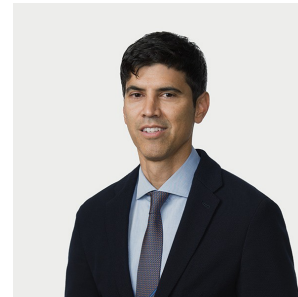
- Most participants should anticipate receiving their certificate of attendance in four to eight weeks following the webcast.
- **Please direct all questions regarding MCLE to CLE@gibsondunn.com.**

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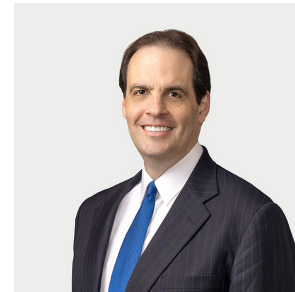
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Agenda

01 SEC and CFTC Programs

02 DOJ Pilot Program

03 False Claims Act

04 FinCEN Program

05 IRS Program

06 International Programs

SEC and CFTC Programs

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SEC/CFTC: The Current Commissions



<p><u>Caroline D. Pham (R)</u> Acting Chairman since 2025 Commissioner since 2022</p>	<p><u>Kristin Johnson (D)</u> Commissioner since 2022</p>	<p><u>Christy Goldsmith Romero (D)</u> Commissioner since 2022</p>	<p><u>Summer K. Mersinger (R)</u> Commissioner since 2022</p>
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U.S. Securities and Exchange Commission

<p><u>Paul S. Atkins (R)</u> Chairman since 2025</p>	<p><u>Hester M. Peirce (R)</u> Commissioner since 2018</p>	<p><u>Caroline A. Crenshaw (D)</u> Commissioner since 2020</p>	<p><u>Mark T. Uyeda (R)</u> Commissioner since 2022</p>
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SEC/CFTC: Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

Relevant Background

- **Dodd-Frank**
 - To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail,” to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.
- **Section 748 Dodd-Frank**
 - “Commodity Whistleblower Incentives and Protection.”
 - The Commodity Exchange Act is amended by adding at the end of the following [Section 23 Commodity Exchange Act].
- **Section 922 Dodd-Frank**
 - “Securities Whistleblower Incentives and Protection.”
 - The Securities Exchange Act of 1934 is amended by inserting after Section 21E of the Securities Exchange Act of 1934 [section 21F of the Exchange Act].

SEC/CFTC: Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

Make a financial award to “whistleblowers” who:

- **“voluntarily”**
 - not pursuant to pre-existing legal or contractual duty
 - before receiving a request from the agency or other regulatory / law enforcement agency
- **provide “original information”**
 - derived from whistleblower’s independent knowledge / analysis not already known to the agency
 - provided to the agency for first time after July 21, 2010
- **to “the Commission”**
 - Agency implementing regulations prescribe procedures for submission
- **that “leads to”**
 - information must either be “sufficiently specific, credible, and timely” to cause the agency to commence / expand / reopen investigation or, where there is already ongoing investigation of subject, information must “significantly contribute[] to the success of the action”
- **a “successful enforcement [action]”**
 - monetary sanctions (including penalty, disgorgement, and interest) > \$1M
 - may include sanctions imposed in criminal or regulatory actions brought by other agencies
 - awards range from 10% to 30% of monetary sanctions

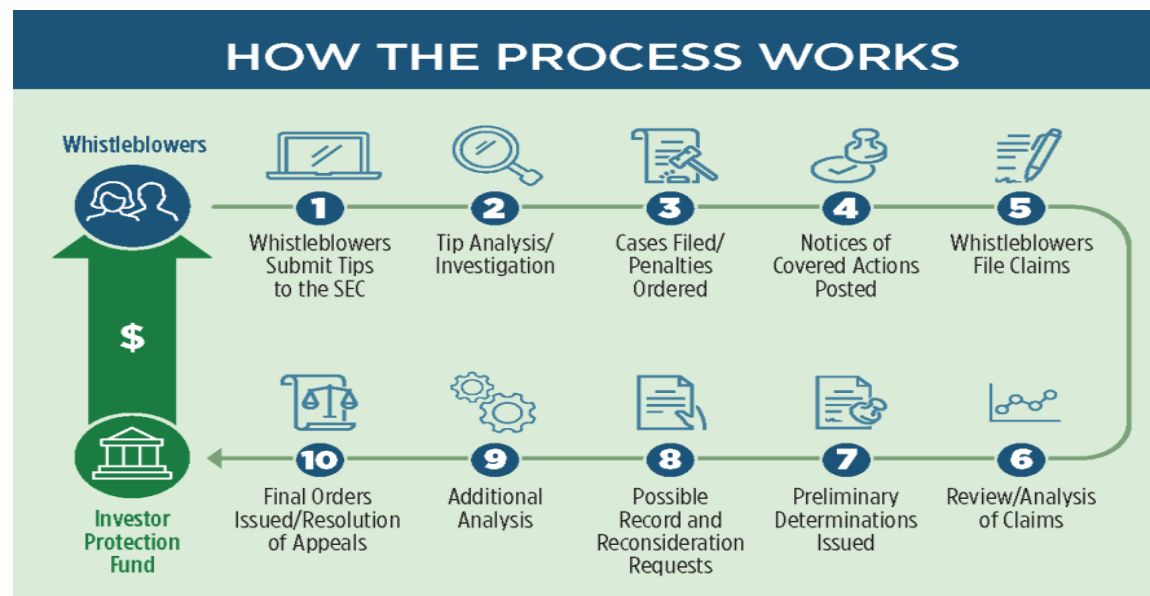
SEC/CFTC: Whistleblower Process Overview

CFTC



The Commodity Futures Trading Commission's (CFTC) Whistleblower Program, created by the Dodd-Frank Act, provides monetary incentives to individuals who come forward to report possible violations of the Commodity Exchange Act. It also provides [anti-retaliation protections](#) for whistleblowers. The CFTC's Whistleblower Office administers the program.

SEC



SEC/CFTC: CFTC 2024



Issued 12 orders granting awards in FY 2024. Enforcement actions associated with these awards have resulted in monetary sanctions of about **\$162 million** collected.



Since making its first award in 2014, the CFTC has issued 53 orders granting awards totaling **nearly \$390 million** in award payments.



Granted 15 applications in FY 2024, totaling **over \$42 million** in award payments.



To date, enforcement actions associated with all program awards have resulted in monetary sanctions totaling **over \$3.2 billion**.



Received a record **317 award applications** in FY 2024.



Received a record **1,744 whistleblower tips** in FY 2024.

Source: CFTC, <https://www.whistleblower.gov/>

Top 10 Whistleblower Awards

As of the end of fiscal year 2023, a total of almost \$2 billion had been awarded to nearly 400 whistleblowers through the SEC's whistleblower award program.

Here are the 10 largest awards issued to date...

By Award Amount

Listed by amount of each award issued:

- [\\$279 million](#) - May 5, 2023
- [\\$114 million](#) - Oct. 22, 2020
- [\\$110 million](#) - Sept. 15, 2021
- [\\$82 million](#) - Aug. 23, 2024
- [\\$50 million](#) - April 15, 2021
- [\\$50 million](#) - March 19, 2018
- [\\$50 million](#) - June 4, 2020
- [\\$39 million](#) - Sept. 6, 2018
- [\\$37 million](#) - Dec. 19, 2022
- [\\$37 million](#) - July 26, 2024

Whistleblowers have incentives to obtain the largest award possible; the Division of Enforcement has an incentive to maximize awards as an inducement for whistleblowers to come forward; and the Commission has an incentive to maximize awards as a metric to illustrate the success of the program.

-- SEC Commissioners Peirce and Uyeda ([9/19/24](#))

In FY 2024, of the whistleblowers who received awards, approximately 38% were outsiders and approximately 62% were insiders.

- **Geographic Diversity in Source of Tips**

Finally, highlighting the global reach and interconnectedness of the financial markets, the Program continues to receive tips from all over the world. In FY 2024, the foreign countries from which the highest number of tips originated were Canada, the United Kingdom, India, Australia, and Germany. Domestically, the states from which the highest number of tips originated were South Carolina, Florida, California, Texas, and New York.

SEC/CFTC: Related Considerations

**Internal
Reporting**

**Actions Taken to
Impede Reporting**

Retaliation

Self-reporting

DOJ Pilot Program

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DOJ: Corporate Whistleblower Awards Pilot Program – Key Features

Overview

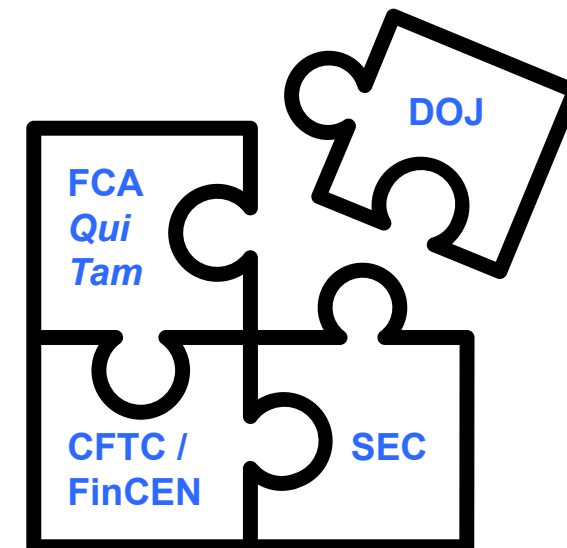
- Structured as three-year pilot program
- Launched August 1, 2024, by DOJ's Criminal Division (MLARS)
- Intended to address gaps in existing whistleblower programs
- Funded by DOJ's Asset Forfeiture Fund

Whistleblower Awards

- Potentially awarded where forfeitures > \$1M
- Calculated based on percentage of “net proceeds forfeited” (with different percentages based on size of forfeiture)
- Subject to DOJ's discretion

Program Coverage

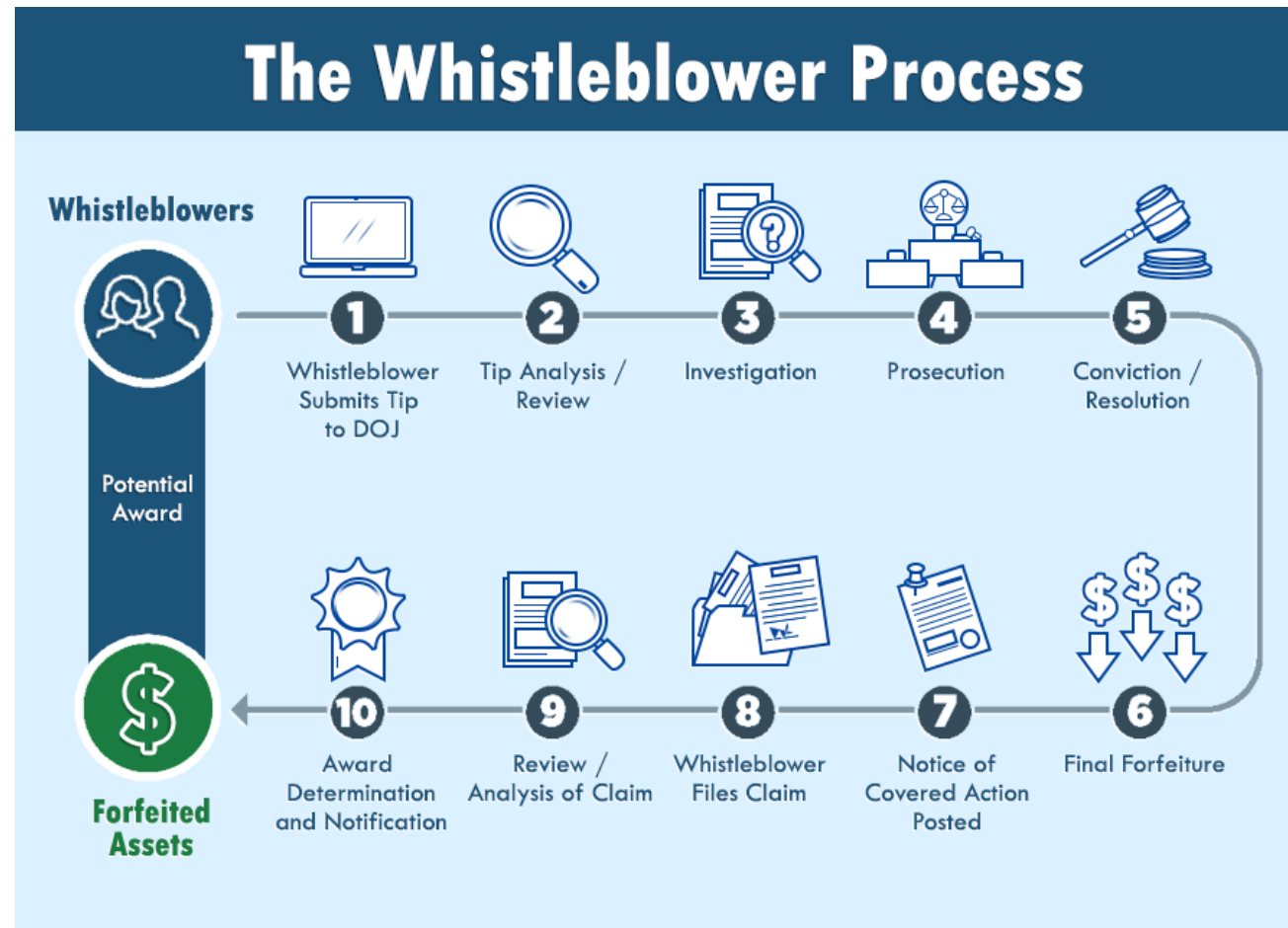
- Focused on specific crimes:
 - Violations by financial institutions (e.g., money laundering)
 - Foreign / domestic corruption
 - Health care fraud (not covered by the FCA)
- Applies only to individual whistleblowers
- Excludes whistleblowers with significant criminal involvement, as well as internal auditors / compliance officers



DOJ: Corporate Whistleblower Awards Pilot Program – Process

As with other programs, awards will take time to materialize ...

- DOJ intake form identifies potential obstacles to recovery (e.g., role in the criminal conduct, reliance on public sources).
- Prosecution must result in forfeiture, resulting in a notice of covered action – and a whistleblower claim, which DOJ will then evaluate to determine an award.



DOJ: Corporate Whistleblower Awards Pilot Program – Potential Impact

Outlook and Impacts

- DOJ reportedly received > 100 tips in the program's first month and hundreds more since then.
- Various U.S. Attorney's Offices have implemented their own whistleblower programs (e.g., C.D. Cal., N.D. Ill., S.D. Fla., EDNY, SDNY).
- Questions remain regarding whether DOJ will pursue tips relating to certain pilot program priorities (e.g., FCPA matters).

Corporate Strategies and Risks

- Corporations can still qualify for declinations under DOJ's voluntary self-disclosure program if:
 - They self-report within 120 days of whistleblower submission; or
 - They show strong compliance and remediation.
- Corporations must carefully evaluate any step that could be viewed as retaliatory against a reporter.
 - DOJ emphasized its anti-retaliation message by threatening loss of cooperation / remediation credit and even obstruction prosecutions.
- Because of the potential for inter-agency overlap and scrutiny, corporations should evaluate internal reports swiftly.

False Claims Act

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FCA: *Qui Tam* Provisions

False Claims Act (FCA) – *Qui Tam* Provisions

- The FCA, 31 U.S.C. §§ 3729–3733, is the federal government’s **primary weapon to redress fraud** against government agencies and programs (e.g., federal health care programs).
- The FCA provides for recovery of **civil penalties and treble damages** from any person who knowingly submits or causes the submission of **false or fraudulent claims** to the United States for money or property.
- Private persons (*qui tam* relators) may bring suit under the FCA and secure **as much as 30%** of government recoveries.
- The FCA’s **non-retaliation provision** (§ 3730(h)) applies both to employees and third parties (e.g., contract workers); relief may include: 2x back pay (and interest), reinstatement (at seniority level), and/or costs and attorneys’ fees.

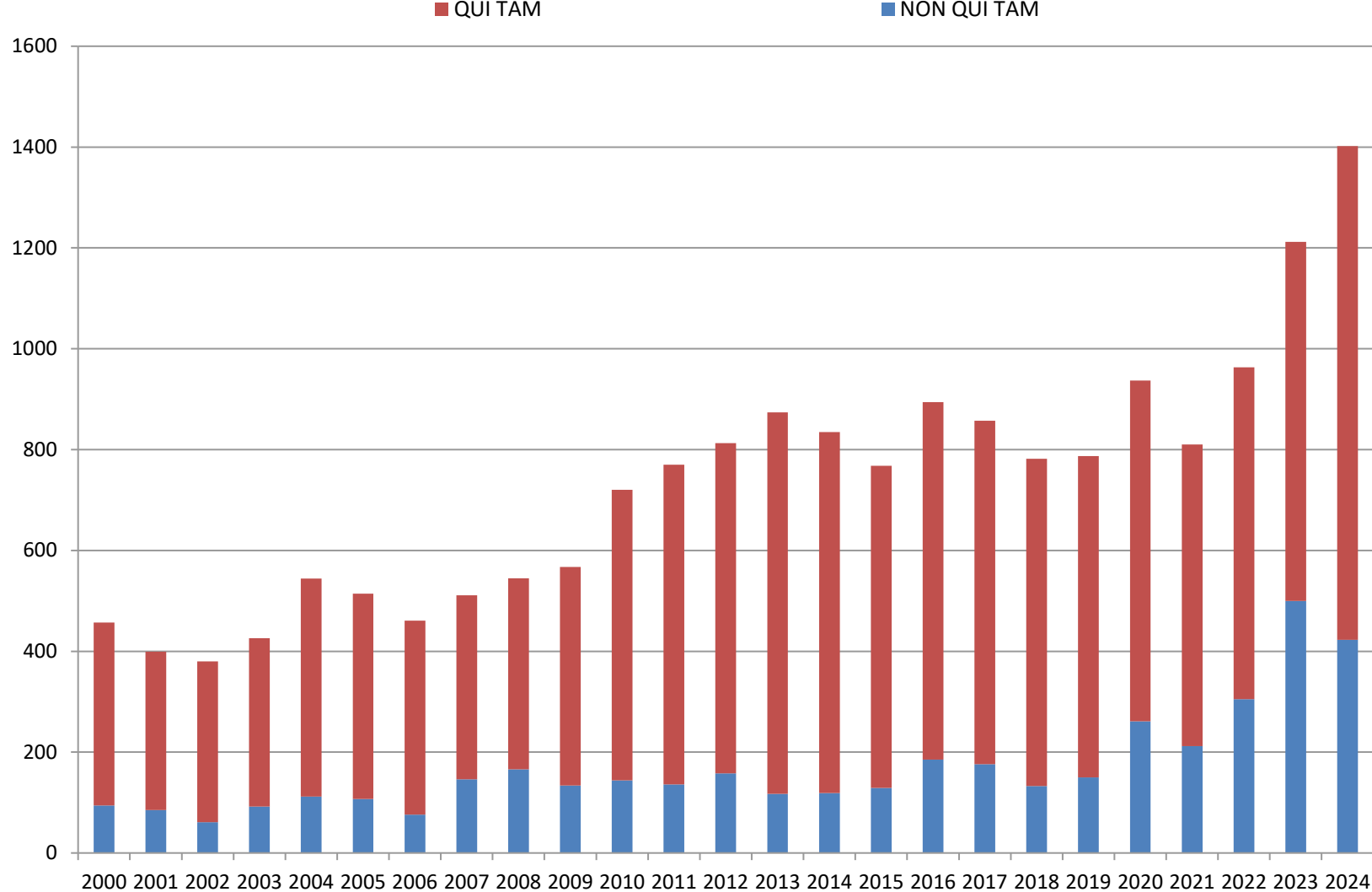
“In short, sir, I have based the [FCA’s *qui tam* provision] upon the old-fashioned idea of holding out a temptation and **‘setting a rogue to catch a rogue,’** which is the safest and most expeditious way I have ever discovered of bringing rogues to justice.”

*Statement of Senator Howard,
Cong. Globe, 37th Cong. 955-56
(1863)*



FCA: New FCA Cases

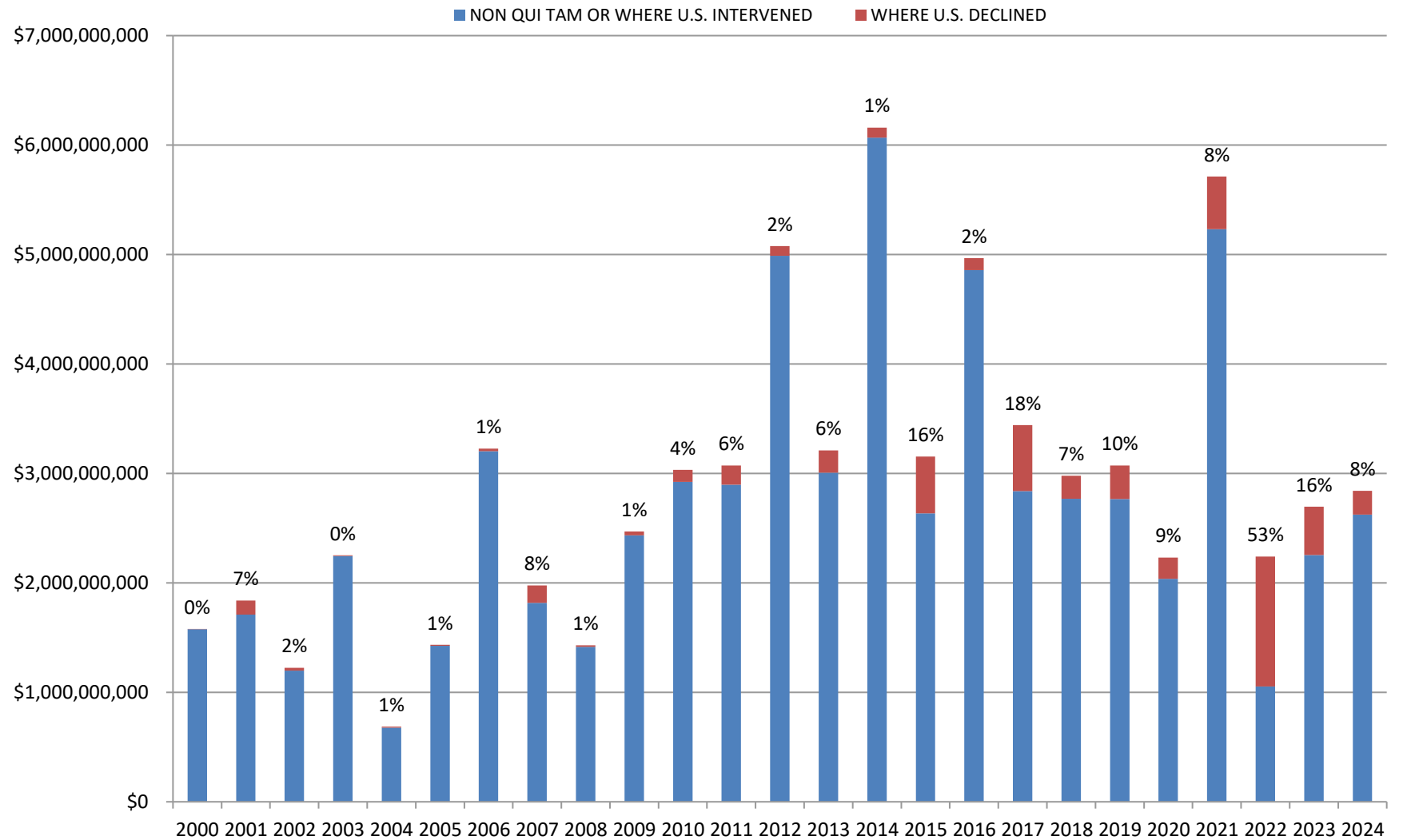
New FCA Cases: 2000 - 2024



Source: DOJ "Fraud Statistics – Overview" (Jan. 15, 2025)

FCA: Recoveries

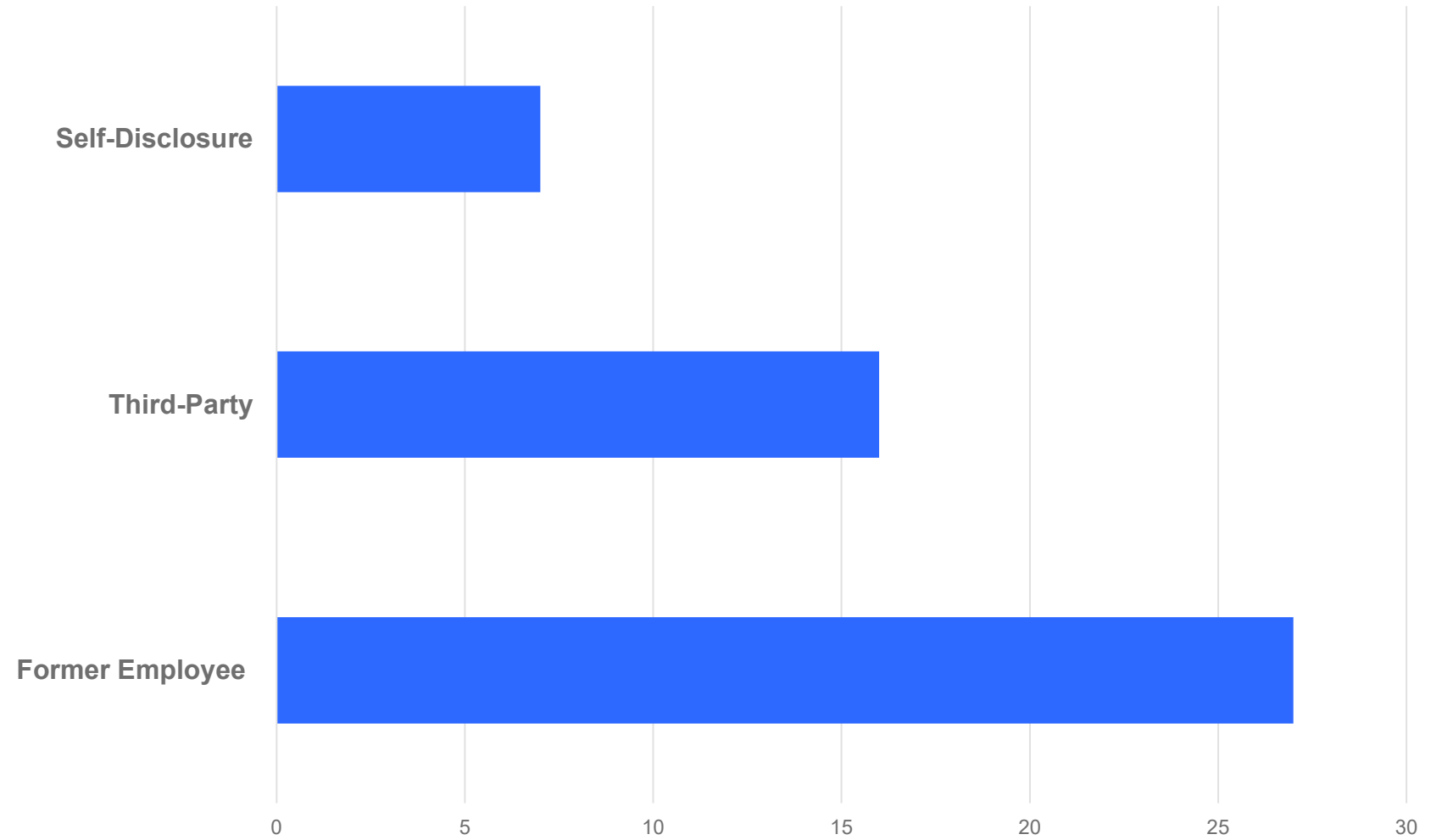
Settlements / judgments in cases where DOJ declined intervention (as percentage of total FCA recoveries):



Source: DOJ "Fraud Statistics – Overview" (Jan. 15, 2025)

FCA: Enforcement Activity

Enforcement Activity by Disclosure Type

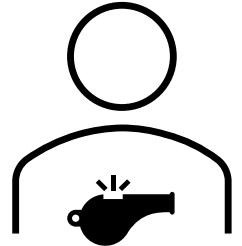


Source: Gibson Dunn "False Claims Act 2024 Mid-Year Report" (July 30, 2024); "False Claims Act 2024 Year-End Update" (Jan. 23, 2025).

FCA: Recent Juris- prudence

Constitutionality of *Qui Tam* Provisions

- Over the years, defendants have argued that the FCA's *qui tam* provisions improperly grant private parties the authority to pursue cases on behalf of the United States, a **responsibility exclusively vested** in the **Executive Branch** by Article II of the Constitution.
- Every circuit court that has addressed this issue has **concluded that the *qui tam* provisions are constitutional**, primarily because the government retains ultimate authority and control over the litigation, even after it ceases to be a party.
 - See *United States ex rel. Stone v. Rockwell Int'l Corp.*, 282 F.3d 787 (10th Cir. 2002); *Riley v. St. Luke's Episcopal Hospital*, 252 F.3d 749 (5th Cir. 2001); *United States ex rel. Taxpayers Against Fraud v. Gen. Elec. Co.*, 41 F.3d 1032 (6th Cir. 1994); *United States ex rel. Kelly v. Boeing Co.*, 9 F.3d 743 (9th Cir. 1993).
- Federal district courts in **other circuits** also have **upheld the constitutionality** of the FCA's *qui tam* provisions. See, e.g., *United States ex rel. Lagatta v. Reditus Laboratories, LLC*, No. 1:22-CV-01203-SLD-JEH, 2024 WL 4351862 (C.D. Ill. Sept. 30, 2024).



FCA: Recent Juris- prudence

U.S. ex rel. Zafirov v. Florida Medical Associates, LLC,
No. 8:19-CV-01236-KKM-SPF (M.D. Fla. Sept. 30, 2024)

- A relator alleged that defendants falsified patients' medical conditions in claims to Medicare. DOJ declined to intervene. Defendants moved for judgment on the pleadings, arguing that the FCA's *qui tam* provisions are unconstitutional.
- Judge Kathryn Mizelle, a former Justice Thomas clerk, concluded that (1) **relators act as officers** of the United States, (2) historical examples of *qui tam* provisions do **not exempt** a relator from the Appointments Clause of Article II, and (3) because relators are **not constitutionally appointed**, their execution of litigating powers is unconstitutional because *qui tam* provisions “**permit[] unaccountable, unsworn, private actors to exercise core executive power with substantial consequences to members of the public.**”
- *Zafirov* conflicts with a ruling from another Florida district court issued the same month. That court rejected a defendant's constitutional argument and denied the motion to dismiss, noting that “**the Eleventh Circuit has yet to squarely consider the issue.**” *United States ex rel. Butler v. Shikara*, No. 20-CV-80483, 2024 WL 4354807, at *11 (S.D. Fla. Sept. 6, 2024).
- DOJ and relator are appealing Judge Mizelle's decision to the Eleventh Circuit.

FinCEN Program

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FinCEN: Overview

Overview

- FinCEN has traditionally served as the part of the Treasury Department responsible for **enforcement of the Bank Secrecy Act (BSA)**.
- **Whistleblower program was established in 2020:**
 - Prior to 2020, FinCEN could receive tips but lacked the authority to offer financial rewards.
 - Established by the Anti-Money Laundering Act.
 - Office was operational by October 2021.
 - Amended in 2022 by the AML Whistleblower Improvement Act to include sanctions violations.
 - Incentivizes reporting by offering awards to eligible whistleblowers equal to 10% to 30% of the total fines and penalties above \$1 million.
 - Contains anti-retaliation provisions.

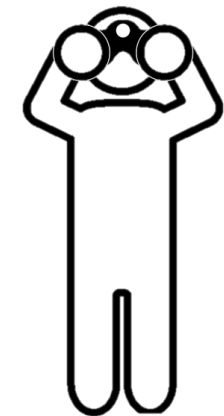
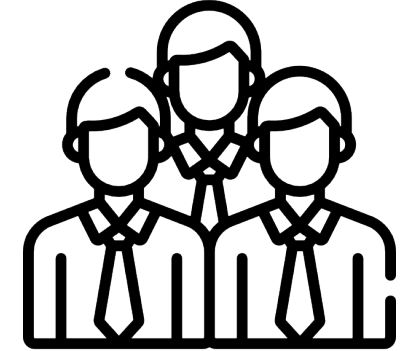


FinCEN: Eligible Whistle- blowers

Eligible Whistleblowers

- To be considered eligible, whistleblower must:
 - **Voluntarily** disclose the violation;
 - Provide **original** and **credible** information; and
 - That results in a **successful enforcement action**.
 - **Can be anonymous** so long as represented by an attorney.

- The Whistleblower Program sets forth **broad standards for participation**. Whistleblowers can be:
 - Anyone, including insiders and/or current or former employees.
 - Outsiders with independent knowledge or independent evaluation of publicly available information, as long as the government is not already aware of the information.
 - Can be either U.S. or foreign citizens.



FinCEN: Whistleblower Process

Whistleblower Process

- 1. Report Submitted to FinCEN:** A “tip” is filed by whistleblower (with or without an attorney), generally by email. No set regulations on format for submission although expected to present timeline of key events and attach supporting documentation.
- 2. Intake by FinCEN Whistleblower Office:** The office will review the submission and, if credible, send to the enforcement team(s) best positioned to conduct further review (e.g., FinCEN, OFAC, DOJ, BIS, or others).
- 3. Investigation:** The appropriate enforcement agency will then investigate the allegations further. The investigative team may conduct interviews, request documents, and take other measures.
- 4. Enforcement Action:** Based on the information collected, the investigative team may proceed with an enforcement action.
- 5. Whistleblower Award Determination:** Given a successful enforcement action of over \$1 million, whistleblowers are entitled to 10% to 30% of the government’s recovery.

FinCEN: What is covered?

What is covered?

- Violations of the **Bank Secrecy Act**; such as:
 - Ineffective Anti-Money Laundering and Know Your Customer compliance programs;
 - Failure to submit Suspicious Activity Reports; and
 - Support of money laundering activity.
- Violations of sanctions laws:
 - The **International Emergency Economic Powers Act (“IEEPA”)** (50 U.S.C. § 1701 et seq.);
 - Sections 5 and 12 of the **Trading With the Enemy Act (“TWEA”)** (50 U.S.C. § § 4305; 4312); and
 - The **Foreign Narcotics Kingpin Designation Act** (21 U.S.C. § 1901 et seq.).
 - For example:
 - Doing business with sanctioned entities or countries; and
 - Facilitating sanctioned individuals moving money.
- Related actions, including violations of the **Export Control Reform Act (“ECRA”)** (50 U.S.C. § 4801 et seq.).

FinCEN: Export Controls

Export Controls

- **Future Mitigation Credit:** Separate from the FinCEN program, whistleblowers can obtain future mitigation credit by making a disclosure to BIS:
 - BIS maintains a confidential reporting form.
 - Reporting on the misconduct of others can provide future mitigation credit if reporting leads to a successful enforcement action.
 - Will be considered “Exceptional Cooperation” with BIS’s Office of Export Enforcement.
- **Export Controls Reform Act:** Currently an ECRA resolution is not an independent basis for recovery under the FinCEN or DOJ whistleblower programs, but could potentially be part of future expansion.
- **BIS Whistleblower Program Under Consideration by Congress:** Bipartisan legislation (“Stop Stealing our Chips Act”) has been introduced by Senator Rounds and Senator Warner to create a whistleblower program specific to BIS, with the stated aim of preventing the smuggling of American-made artificial intelligence (AI) chips into China.

FinCEN: Best Practices to Mitigate Risk

Best Practices to Mitigate Risk

- **Build Out A Robust Internal Reporting Program**
 - Successful internal reporting programs are critical to addressing employee concerns.
 - Whistleblowers tend to participate in the FinCEN or other whistleblower programs due to frustrations with internal channels.
 - Academic studies suggest that 83% of whistleblowers for the SEC submitted complaints internally, and 90% of them had contacted a supervisor, prior to engaging the enforcement agency.
- **Communicate, Investigate, Remediate**
 - Create an enabling environment for use of internal reporting measures.
 - Follow-up by conducting appropriate diligence or investigation.
 - Take necessary steps to remediate any issues.
 - Maintain communication with the employee who reported, even when there's certain information you cannot share.
- **Voluntary Self Disclosure Considerations**
 - If the government is likely to hear about it, better that they hear it from you first.
 - But each decision is fact and circumstances dependent. Risk / reward calculus.

IRS Program

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IRS: Purpose and Results

Purpose: The IRS Whistleblower Program seeks to **enhance voluntary compliance** with the nation's tax laws.

IRS Whistleblower Office Vision

To effectively promote voluntary compliance and reduce the tax gap by providing excellent service to whistleblowers, taxpayers, and other stakeholders.

Source: IRS Whistleblower Office Operating Plan (2025)

Results:

- Since 2007, the Whistleblower Office has awarded **over \$1.3 billion** based on the collection of **more than \$7.4 billion** attributable to whistleblower information.
 - \$123.5 million awarded in fiscal year 2024 alone – third-highest total on record.
- Whistleblowers typically receive **15% to 30%** of the money collected based on their claims.

IRS: Historical Overview

1867 – First law related to tax whistleblowers enacted

- Allowed Secretary of the Treasury to pay such amounts as deemed necessary “for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same.”
- Now Internal Revenue Code (IRC) section 7623(a).

2006 – Tax Relief and Health Care Act of 2006

- Mandated the creation of the IRS Whistleblower Office to administer the IRS Whistleblower Program.
- Added IRC section 7623(b), which enacted significant changes in the award program for whistleblowers.

2014 – Final Treasury regulations

- Provided guidance for the IRS Whistleblower Program under IRC section 7623.

2018 – Bipartisan Budget Act of 2018

- Added IRC section 7623(c), which clarified the definition of “proceeds” subject to an award percentage.
- Amended IRC section 7623(b) to limit it to cases in which the “proceeds” at issue exceed \$2,000,000.

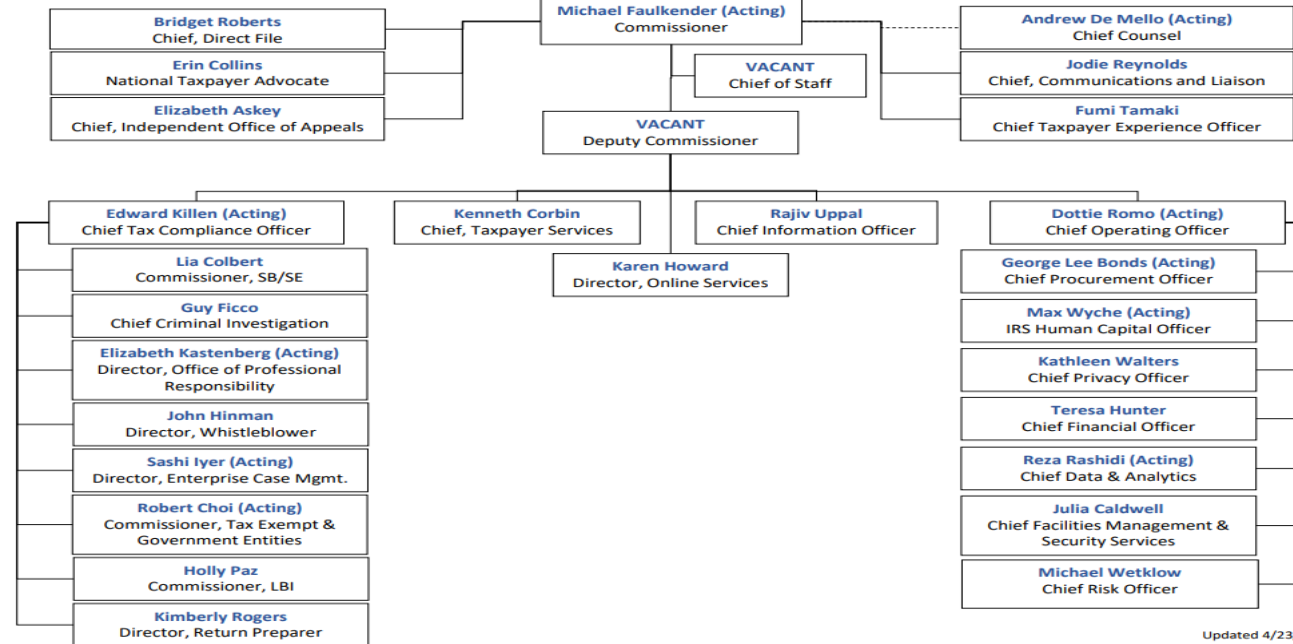
2019 – Taxpayer First Act of 2019

- Various provisions to improve whistleblower service and protect whistleblowers against retaliation.

IRS: Organizational Aspects

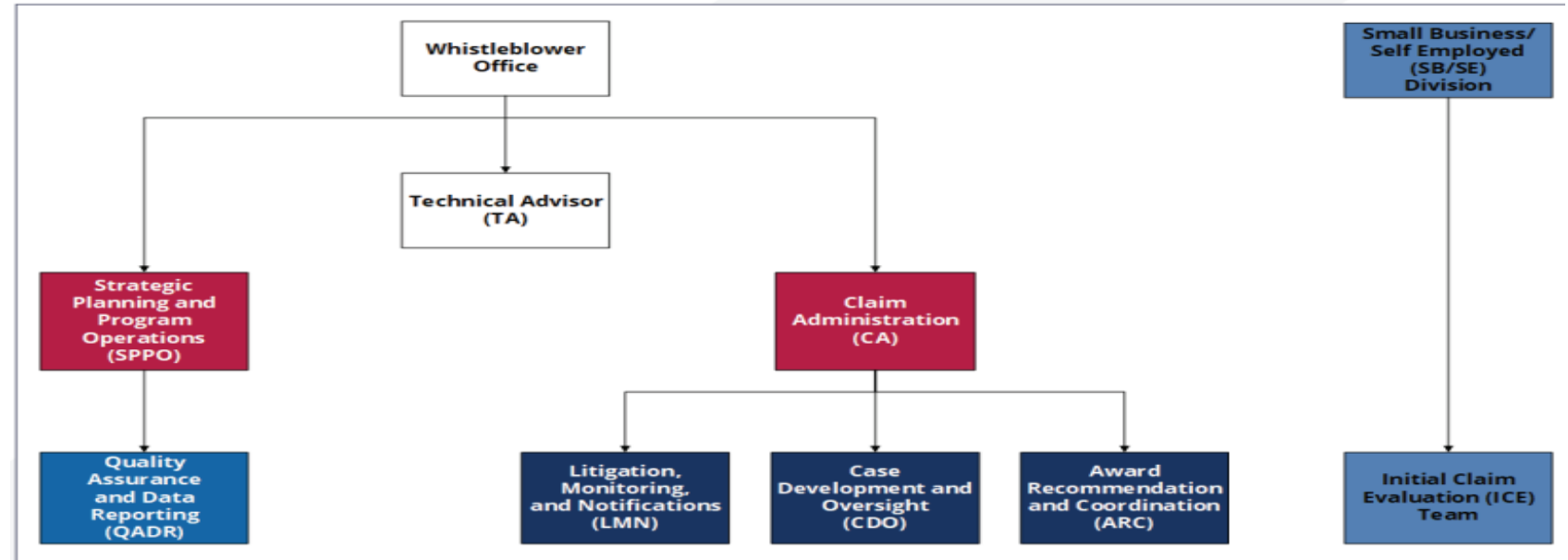
DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE

Organization and Top Officials



Updated 4/23/2025

Figure 2: Whistleblower Office and ICE Team Organization Chart



Source: Whistleblower Office Annual Report (2023)

IRS: Submitting a Whistleblower Claim

IRS Form 211, Application for Award for Original Information, with supporting documentation.

Form 211 (March 2024)	Department of the Treasury - Internal Revenue Service Application for Award for Original Information	OMB Number 1545-0409
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Do not send the same claim information multiple times or through multiple channels (e.g., electronic, mail, fax) as this may cause claim processing delays. Fields on this form have been designed to expand and may cause a narrative or other field to appear when a box is checked.

Check the box to print a blank copy of the form and manually complete

Section A – Information About the Person or Business You Are Reporting

1. Are you submitting information related to an existing claim Yes No

2. Did you submit this information to the IRS, other Federal or State Agencies, or government personnel Yes No

3. Check the box if you are including attachment(s) with this claim submission

4. Name of taxpayer (person or business; include aliases) who committed the violation

5. Taxpayer Identification Number (e.g., SSN, ITIN, or EIN)

6. Taxpayer's date of birth or approximate age

7. Taxpayer's address (including ZIP code)

8. Check the box to add additional taxpayers to the list

9. What is your relationship (current and former) to the alleged noncompliant taxpayer(s) (check all that apply) (attach sheet(s) if needed)

Current employee Former employee Attorney CPA
 Relative/Family member Other None

Section B – Information About the Alleged Violation

10. Alleged violation (check all that apply) (information about IRS compliance work areas is available at [irs.gov/whistleblower](https://www.irs.gov/whistleblower))

Unreported/Under Reported Income Overstated/False Deductions
 Income Characterization Cryptocurrency/Digital Assets
 International/Foreign Transaction Failure to Withhold Tax
 Undisclosed Foreign Bank and Financial Accounts Failure to File Tax/Informational Return
 Specific Allegations of Tax Fraud Failure to Pay Tax
 Employee vs. Subcontractor Tax Exempt/ Governmental Entity Tax Issue
 Money Laundering and Bank Secrecy Act Promoter of Tax Avoidance Schemes
 Tax Shelter/Abusive Transaction Terrorism
 Other (identify) _____

11. Describe the alleged violation and provide all pertinent facts. Attach a detailed explanation, include all records and supporting information in your possession, and describe the availability and location of any additional supporting information not in your possession

12. Is the information in this claim based on public information Yes No

13. Describe the amount of tax owed by the taxpayer(s). Provide all records and a summary of the information you have that supports your claim as to the amount owed (i.e., books, ledgers, records, receipts, tax returns, etc) (Attach sheet(s) if needed)

Page 2 of 4

14. Fill in tax year (TY) and dollar amount (\$), if known
Check the box to indicate if the alleged violation(s) is ongoing

Tax Year (TY)	Dollar Amount (\$)	Tax Year (TY)	Dollar Amount (\$)	Tax Year (TY)	Dollar Amount (\$)	Tax Year (TY)	Dollar Amount (\$)	Tax Year (TY)	Dollar Amount (\$)

Section C – Information About Yourself

15. Check the box to indicate if multiple claimants are filing this claim jointly

Provide the claimant's information (use the button to add additional claimants to the list)

Claimant 1.

16. Name of individual claimant _____

17. Claimant's date of birth (MMDDYYYY) _____

18. Claimant's SSN or ITIN _____

19. Address of claimant (including ZIP code)

Check the box if you agree to have correspondence mailed to the address on record with the IRS

20. Telephone number (including area code) _____

21. Email address _____

22. Check the box if Form 2848, Power of Attorney and Declaration of Representative, is attached to this claim submission

23. Are you the spouse or a dependent of an IRS employee Yes No

24. Are you currently, or formerly, an employee of the Department of Treasury or any of its agencies Yes No

25. Are you currently, or formerly, an employee of the Federal Government Yes No

26. Are there any Federal laws or regulations that require you to disclose this information Yes No

27. Are there any Federal laws or regulations that prohibit you from disclosing this information Yes No

28. Are you currently, or formerly, a Federal Government contractor Yes No

29. Are you filing this form based on information obtained from an ineligible person Yes No

30. I declare under penalty of perjury that I have examined this application, my accompanying statement, and supporting documentation and aver (affirm) that such application is true, correct, and complete, to the best of my knowledge

Signature of Claimant (required) _____ Date _____

IRS: Claimants and Process

Who is eligible to file a whistleblower claim?

- Any individual other than individuals described in specifically enumerated categories.

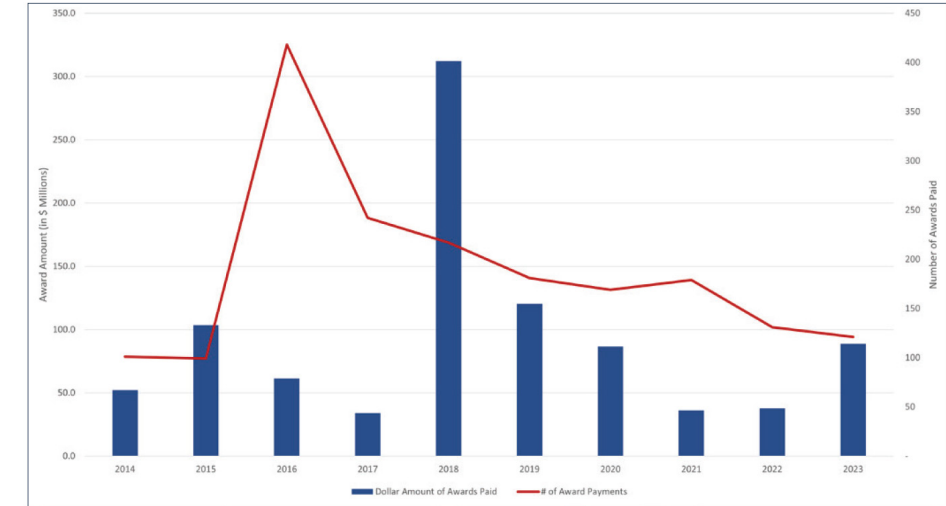
Once a claim is submitted:

- The Whistleblower Office will review claim and decide if it warrants further consideration.
 - If so, claim will be forwarded to the relevant IRS office for further investigation.
 - If not, whistleblower will receive claim rejection or denial letter.
- At the end of an investigation, the affected taxpayer may exercise its rights to administrative and judicial appeals, which can take years to ultimately resolve.
- A whistleblower is not paid until a taxpayer's issues are finally resolved and payment has been made.
- The courts have found that the discretion to make, or not make, an award is essentially non-reviewable.

IRS: Annual Report to Congress



Figure 3: Ten-Year Award Comparison



FRAMEWORK OF STRATEGIC PRIORITIES

The IRS Whistleblower Office Operating Plan is framed around **six strategic priorities**:

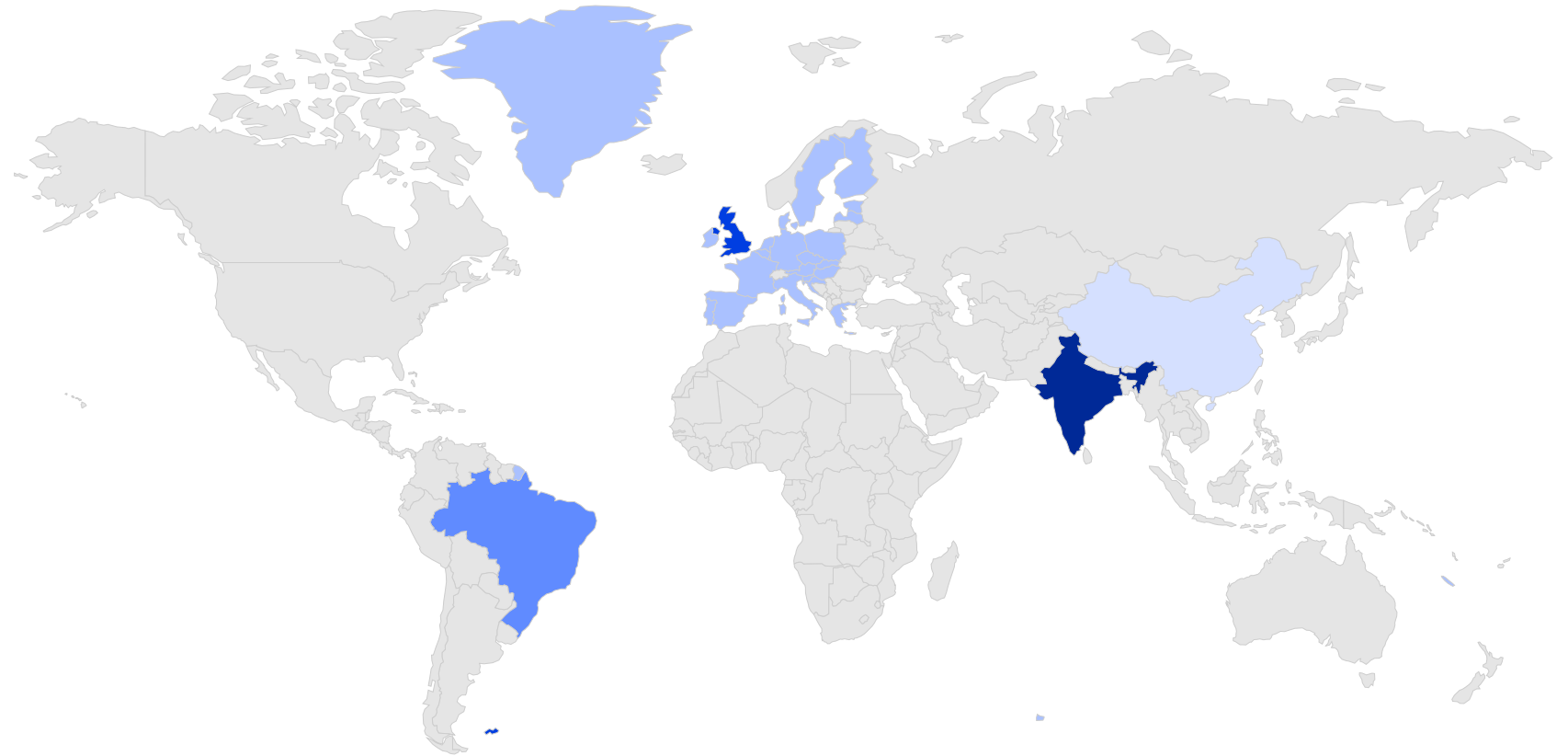
- 1 Enhance the claim submission process to promote greater efficiency.
- 2 Use high-value whistleblower information effectively.
- 3 Award whistleblowers fairly and as soon as possible.
- 4 Keep whistleblowers informed of the status of their claims and the basis for IRS decisions on claims.
- 5 Safeguard whistleblower and taxpayer information.
- 6 Ensure that our workforce is supported with effective tools, technology, training, and other resources.

International Programs

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International: Overview

Overview of Whistleblowing Programs in China, India, Brazil, UK, and the EU



International: EU

The EU's path to whistleblower protection

Before 2019:

- No comprehensive whistleblower regulation.
- Only sector-specific rules (e.g., finance, antitrust, healthcare).
- No established “speak-up culture.”

2019:

- EU adopts Whistleblower Directive (EU) 2019/1937.

Since 2021:

- Directive to be transposed by EU Member States
 - Significant delays in transposing the Directive (e.g., in Germany, Spain, France, Poland, Hungary).
 - *Now:* National whistleblower laws in all EU Member States.
- However:
 - Directive defined minimum standards to be transposed by EU Member States only resulting in a fragmented landscape of whistleblowing laws across the EU.
 - “Speak-up culture” is slowly developing.



International: EU

EU Whistleblower Directive – Key Elements

- **Scope:** Protects reporters in both public and private sectors.
- **Protected Areas:** While the Directive only covers certain breaches of EU law, many EU Member States have also included breaches of national law.
- **Reporting Channels:**
 - Internal reporting (within organizations).
 - External reporting (to competent authorities).
- **No Hierarchy of Reporting Channels:** No obligation to report internally before going external.
- **Public Disclosures:** Allowed, but only under strict conditions (e.g., imminent danger or risk of retaliation).
- **Protection Against Retaliation:** Prohibits dismissal, demotion, intimidation, or other forms of retaliation.
- **No Rewards:** The Directive contains no provisions for financial rewards for Whistleblowers.



International: EU

EU Whistleblower Directive - Challenges

- **Centralized vs. local reporting systems:** According to the EU Commission, local reporting channels as well as investigation structures need be established in every entity with 50 or more employees including group entities.
- **Reversed burden of proof:** Employers must prove that adverse actions vis-à-vis reporters were not retaliation.
- **Document retention requirements:** The Directive provides for distinct document retention requirements regarding reports.
- **Data privacy laws:** Data privacy requirements under the GDPR need to be adhered to when handling reports and conducting investigations.
- **Speak-up culture:** Dedicated training and tone from the top likely required to establish robust speak-up cultures.
- **Broad Judicial Interpretation:** Luxembourg Leaks Case (ECtHR, Feb. 14, 2023).



International: UK



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United Kingdom

- The UK Treasury has announced that it will roll out a **multimillion-pound whistleblower reward scheme**, offering up to 25% of recovered tax revenue to those who expose tax fraud.
 - **Public Interest Disclosure Act (PIDA)**
 - Protects 'workers' (does not cover self-employed individuals).
 - Applies to both **public** and **private** sector.
 - Covers disclosures of **criminal offences, breach of legal obligation, miscarriages of justice, health and safety dangers and environmental damage**.
 - Protection applies only if the disclosure is in the '**public interest**'.
 - **No obligation** to report **internally** before going external.
 - Prohibition of **detriment** and **unfair dismissal**.
 - But: **No penalties** for retaliation.
- While many countries still lack comprehensive protection, the UK has had PIDA **in place since 1998**.
- However, PIDA is often criticized as outdated (e.g., due to the lack of penalties for retaliation) and **calls for reform** have already been raised in Parliament in recent years.

International: India



India

- India **does not yet have a comprehensive whistleblower legislation.**
 - In 2014, the **Whistleblowers Protection Act** was enacted to protect individuals exposing corruption in the public sector.
 - However, the Act **has not been implemented** effectively due to concerns over national security and other issues.
 - The **Companies Act**, 2013, requires the implementation of a whistleblower policy, but primarily only by listed companies.
 - Recently, India has introduced **new disclosure obligations** for companies:
 - Companies are required to share information on whistleblower complaints received during the financial year with their statutory auditors.
 - Statutory auditors must consider these complaints and how they were handled by the company.
 - Auditors are required to report frauds discovered by them in the course of an audit and frauds disclosed to them by the Company or any other person.
- Whistleblowers are granted **only limited protection.**
- Especially still **no effective protection against retaliation.**

International: South Korea

South Korea

- South Korea has **multiple whistleblower laws** and is **highly successful** in the protection and promotion of whistleblowers.
- Whistleblower regulation is primarily governed by **two key laws**:
 - **Public Interest Whistleblower Protection Act (2011)**
 - Protects whistleblowers who report violations that harm public interest (e.g., public health, safety, environment, consumer rights).
 - Protections: Confidentiality, protection against retaliation and eligibility for financial rewards.
 - 2024: Amendments by the Anti-Corruption and Civil Rights Commission (ACRC) removed the monetary cap on compensation and further strengthened whistleblower protections.
 - **Act on the Protection of Reporters of Corruption (2001)**
 - Targets corruption and abuse of power, especially within the public sector.
 - Protections: Identity protection, immunity from liability, support for legal action, and eligibility for financial rewards.
- The **prospect of financial rewards** – reaching up to 30% of the amount recovered – has significantly contributed to the advancement of whistleblower support in South Korea.



International: China

China

- China **does not have a comprehensive whistleblower legislation**, there are only sector-specific whistleblower regulations (e.g., financial sector).
 - **But:**
 - 2019: The State Council **called for whistleblower systems** at both central and provincial levels.
 - 2020: The Civil Code **encouraged reporting** of workplace sexual harassment, implicitly promoting whistleblowing.
 - 2021: China introduced the **Interim Measures for Rewards for Whistleblower Reports**.
 - Monetary reward up to RMB 1 million (≈ USD \$157,000).
 - Whistleblower must report “major violations.”
 - Ineligible: Government officials, professional investigators, wrongdoers, IP rights holders affected by the case.
- Whistleblowing laws in China **have evolved in recent years** and may continue to strengthen in the coming years.



International: Brazil



Brazil

- Brazil **does not have a standalone whistleblower legislation**, instead, there are several separate laws and regulations.
 - Key whistleblower laws and programs:
 - **Whistleblower Hotline Law (2018)**
 - Requirement to set up free, anonymous whistleblower hotlines.
 - Applies only to the public sector.
 - **Anti-Crime Package (2019)**
 - Provides protection and financial rewards for whistleblowers reporting serious crimes.
 - Primarily focused on the public sector.
 - **Sector-Specific Laws**
 - E.g., in equal pay legislation or in the financial sector.
 - Applies to both public and private sector.
- Whistleblower legislation in Brazil remains fragmented and primarily applies to the public sector.
- However, a comprehensive whistleblower draft law is currently under legislative review.

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