

## Boards Urged to Invest in Whistleblower Programs Despite Looming Enforcement Shift

Bolstering internal tip programs that support whistleblowers can mitigate regulatory risk

By **Nick Muscavage** | May 16, 2025

President **Donald Trump**'s administration may take a new approach to corporate enforcement, but that doesn't mean companies should start taking a lax approach to internal whistleblower programs.

Whistleblowers will still come forward with tips if they suspect wrongdoing, and companies risk getting hit with massive fines from regulators if they don't create and maintain internal whistleblower programs, sources said. In fact, over 80% of whistleblowers bring their concerns to supervisors and internal channels before going to the government.

Moreover, even with different priorities at the **Securities and Exchange Commission** and **Department of Justice**, whistleblowers will still be awarded for information they bring to regulators, meaning tipsters' incentives to address corporate wrongdoing won't change, according to **John D.W. Partridge**, a co-chair of **Gibson Dunn's Food and Drug Administration** and health care practice group. Partridge spoke on a May 8 webcast hosted by Gibson Dunn that provided an outlook on the government's various whistleblower programs.

"It's possible that the current administration's SEC shifts its calibration of individual versus corporate enforcement, but we haven't historically seen significant shifts in this regard — much less shifts that significantly alter the overall mix of recoveries," he told Agenda by email.

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It's unclear how the SEC will approach whistleblower payouts going forward, but changes are likely. Chair **Paul Atkins** has been a vocal skeptic of large corporate penalties as a means of deterrence. In 2008, he co-wrote a paper with **Brad Bondi**, the brother of Attorney General **Pam Bondi** who now serves as global co-chair of the investigations and white-collar defense practice at **Paul Hastings**. Bondi was counsel to Atkins during his tenure as an SEC commissioner.

The paper argued that fraud committed by corporate insiders hurts shareholders through deception and that the ensuing investigations distract management from business, damage companies' reputation and drain corporate resources. "A penalty would add further to shareholder injury," they wrote.

Meanwhile, Trump has already signaled a significant shift in enforcement priorities, such as the DOJ's pivot from enforcement of the Foreign Corrupt Practices Act, Partridge said. This shift could portend a reduced emphasis on the DOJ's pilot whistleblower initiative, a three-year pilot program intended to fill the gaps left by the government's other whistleblower programs, he added.

Launched in 2024 by former President **Joe Biden**, the pilot program was originally structured to develop tips on private companies' foreign corruption, so "it seems likely that those types of reports may be less likely to lead to enforcement under the current administration — and thus less likely to lead to whistleblower recoveries," Partridge said.

Comparing whistleblower awards from the SEC under Trump's first term to Biden's shows a stark difference in payouts.

Between fiscal years 2017 and 2020, the SEC dished out a total of about \$453 million to whistleblowers. Biden's SEC dwarfed those numbers by awarding about \$1.6 billion to tipsters. In 2021 alone, the SEC awarded \$564 million to 108 whistleblowers, both the largest dollar amount and the largest number of tipsters awarded in a single fiscal year.

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Further, the SEC could also decide to give the lowest amount of a reward statutorily allowed by the Dodd-Frank Act to whistleblowers, which is 10% of

monetary sanctions, rather than the ceiling, 30%.

"If those in authority wanted to essentially stifle and destroy the program, they have that discretion, and it can be fought legally, but it would take years to fix it," Kohn said.

However, he's hopeful that the current SEC will recognize the value whistleblowers bring to the economy by weeding out corporate wrongdoers and preventing widespread shareholder harm — although there may be a "learning curve" for the Trump administration to understand the value they bring to law enforcement, he added.

Companies, however, should not take a shift in enforcement as a pass to demobilize their internal whistleblower programs. Boards, if they create and invest in truly anonymous internal whistleblower resources for employees, can address issues at their companies and mitigate regulatory risk, Kohn said.

Despite this, companies are often slow to take action on tips. Some 83% of whistleblowers first try to go through internal resources before bringing their claims to the SEC, and 90% of False Claims Act tips are brought to supervisors with little effect before the employee turns to the government, research shows.

"Companies need to change these cultures," Kohn said. "Until they do, we will urge every single client to go anonymous and confidential to law enforcement."

Robust internal whistleblower procedures aren't important to minimize risk solely from the SEC and DOJ. The Gibson Dunn attorneys underscored whistleblower programs at agencies such as the **Treasury Department's** Financial Crimes Enforcement Network, **Commodity Futures Trading Commission** and **Internal Revenue Service**. Additionally, the United Kingdom in March announced the creation of a global tax whistleblower reward program to offer awards to tipsters who bring claims of tax evasion and other tax-related charges against corporations.

"From a public company board standpoint, the key takeaway is that a range of different whistleblower programs across jurisdictions are making it all the more important to have a well-resourced internal reporting and investigation function," Partridge said.

"This will help public companies to identify and remediate misconduct before it metastasizes to the point of driving someone to report to a whistleblower program."

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