

DOJ Whistleblower Program May Fuel Criminal Antitrust Tack

By **Megan Wolf, Chris Murphy and Jessica Franzetti** (August 12, 2025, 4:59 PM EDT)

On July 8, the U.S. Department of Justice Antitrust Division announced a new program to provide rewards to individuals who report antitrust violations related to the U.S. Postal Service.[1]

This is the first program of its kind to provide a monetary reward to individuals who assist in the prosecutions of antitrust crimes.

Under the new initiative, whistleblowers will have the opportunity to receive up to 30% of any criminal fines recovered for violations affecting the Postal Service, its revenues or its property.[2]

According to Abigail Slater, the assistant attorney general of the Antitrust Division, the whistleblower program will incentivize individuals to report specific, credible and timely information about illegal agreements and create a pipeline of leads from people with firsthand knowledge of criminal antitrust offenses.

This will help the division "break down those walls of secrecy and hold violators accountable," Slater said in the July 8 announcement.

However, there is much that is still unclear regarding the scope of the program, the parameters for reporters to be eligible to receive awards and where the new program will fit in among the DOJ's various enforcement efforts. This article discusses those remaining questions and considerations.

Discretion: Qualifying for Awards

As part of the new program, whistleblowers who voluntarily report original information about antitrust and related offenses affecting the Postal Service that result in criminal fines or recoveries of at least \$1 million could be eligible for an award from 15% to 30% of the recovery.

However, that award is far from guaranteed, as it will be paid at the discretion of the division in consideration of several qualifications laid out in the division's memorandum of understanding with the Postal Service and its Office of Inspector General.[3]



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It is also somewhat unclear which crimes will be interpreted to have "affect[ed] the Postal Service, its revenues, or its property" and thus be eligible for whistleblower awards.

This limitation will likely be construed broadly, however, to include violations in which the Postal Service was used in the commission of the crime such as mail fraud.[4] The program will also cover crimes in which the Postal Service was a victim, such as a procurement collusion on a Postal Service contract.

Importantly, whistleblowers will need to provide original information, and the division has provided several constraints on that information when it comes to an award.

First, the whistleblower must provide information derived from the individual's independent knowledge, and it must be information that was not previously known to the division or Postal Service from another source.

Relatedly, the information cannot be derived exclusively from a judicial or administrative hearing, government report, audit, or investigation, unless the whistleblower is the source of that information. Notably, information will not be considered original if the person was an officer, director, trustee, or partner and learned of the information from another person.

Where the individual reports the information is also key — it must be provided to the division, Postal Service or Postal Service Office of Inspector General.

One of the most significant requirements to receive an award is that the individual must provide "ongoing, extensive, and timely cooperation and assistance" to the investigation. This includes the division's consideration of whether the information was directly related to a successful prosecution, supported a criminal conviction, or resulted in the conservation of government resources.

The division will similarly consider whether the whistleblower participated in the criminal conduct reported, received an award from another government agency or civil suit, or conversely, faced any unique hardships due to whistleblowing. This is likely similar to the level of cooperation required under the division's leniency program.

Supplementing the Leniency Program

First instituted in 1993 and updated several times since its inception, the division has long considered its leniency program to be the most significant way to identify new cases.[5] While the whistleblower program will create a new pathway for enforcement actions, it will only serve to supplement the leniency program rather than replace it.

There are several reasons for this: first and foremost, the new program will not offer leniency, so it will not encourage the individuals who participated in the illegal conduct to come forward.

Second, the whistleblower program is likely to be used by less senior employees who may have knowledge of improper conduct but are not themselves directly involved.

The program could also lead to new cases where whistleblowers alert the division of information that was originally reported through internal channels, but the decision makers at the company decided against self-reporting and applying for leniency.

Importantly, the memorandum does not address how the division might handle whistleblower information that is determined to be unrelated to the Postal Service. Instead, the memo keeps the nexus to the Postal Service wide and somewhat ambiguous, noting that the harm suffered by the Postal Service, "need not be material or otherwise pose any substantial detriment to the Postal Service."

Continuing to Ramp Up Enforcement Efforts

By creating this new pathway to generate enforcement actions, the division is signaling an intent to continue to increase criminal antitrust enforcement after a period of relative inactivity.

The number of cases filed by the division has noticeably decreased since 2017, when the division has only brought between nine and 26 cases per year, after bringing 60 cases in 2015 and 51 in 2016.

While it may take a few years for the program to result in a meaningful uptick in cases, the creation of the program is a clear indication that criminal antitrust enforcement will be a priority of the current administration.

The division's increased enforcement efforts, including new cases generated through the whistleblower program, will likely focus on public procurement fraud or other instances of fraud in which the victim is the government. And as recently as June and July, the division brought criminal enforcement action in two cases.

On July 9, the division brought the U.S. v. Leiwike action in the U.S. District Court for the Western Division of Texas to combat alleged bid rigging for a project to develop and manage an arena at a public university.[6]

And on June 11, it brought the U.S. v. Butler action in the U.S. District Court for the Southern District of Florida, over an alleged scheme to defraud the U.S. Department of Defense and other federal agencies by submitting altered and fake invoices to the U.S. Navy.[7]

Additionally, the memo establishing the new whistleblower rewards program specifies that the program covers "[f]ederal criminal violations targeting or affecting federal, state, or local public procurement," as well as criminal violations of the Sherman Act.

This is in line with the DOJ Procurement Collusion Strike Force's stated goal of "combat[ing] antitrust crimes and related schemes in government procurement, grant, and program funding at all levels of government."

The DOJ's creation of a new False Claims Act working group, announced July 2, and its focus on fraud in the healthcare industry, also demonstrates an increased emphasis on fraud in which the victim is the government.[8]

Still Prioritizing Cross-Agency Collaboration

The new whistleblower reward program also deepens the collaboration between the division and the other government agencies and offices in bringing criminal antitrust enforcement actions.

The Office of Inspector General was one of the original members of the Procurement Collusion Strike Force,[9] which the division launched in November 2019, with the stated goal of "combat[ing] antitrust

crimes and related schemes in government procurement, grant, and program funding at all levels of government." [10]

This strike force has since expanded to include partnerships between the division and 38 federal agencies and offices. If successful, this program could follow a similar trajectory, especially as it continues a recent trend of favoring enforcement actions initiated by whistleblowers.

In August 2024, the DOJ announced a corporate whistleblower awards pilot program, [11] which was expanded in May as part of DOJ's reprioritization of corporate enforcement, [12] And the previously mentioned False Claims Act working group encourages whistleblowers to report False Claims Act violations in high-priority enforcement areas. [13]

Additionally, the U.S. Securities and Exchange Commission has maintained a whistleblower program since 2011, and eight of the 10 largest awards in the program's history have occurred since 2020. [14]

Taken together, these programs demonstrate an intent by the government to increasingly prioritize enforcement actions initiated through whistleblower reports, and a willingness to reward whistleblowers in appropriate circumstances.

Considerations for Legal and Compliance Teams

The whistleblower program, if successful, will change the calculus for companies considering whether to self-report and take advantage of the leniency program, as the risk the division could learn of the conduct and bring an action independently could drastically increase.

However, the division will have to demonstrate an ability to effectively turn whistleblower reports into successful cases to materially change the behavior of companies considering leniency, especially given the potential for the program to cause the division to be inundated with a myriad of frivolous reports.

Any expansion of the program to involve additional agencies or offices would also signal the division's satisfaction with the early results of the program and indicate the program is significantly increasing the risk that violations will be discovered and should lead companies to apply for leniency earlier or more broadly than they previously would have.

The program also underscores the importance for companies to implement and maintain effective antitrust compliance programs. Now more than ever, companies should ensure that their compliance programs are proactive and targeted at identifying and preventing potential misconduct.

Companies should ensure they have an effective system in place to report potential misconduct, including through anonymous channels. Programs should take seriously any allegations of wrongdoing and take steps to quickly and thoroughly investigate and remedy such allegations, or run the risk that the reporter may have turned to the division.

The risk posed by unidentified or unresolved violations will grow quickly as every new individual who learns of the conduct is a new potential whistleblower, who now may have a greater incentive to file a report with the division instead of using the company's internal compliance reporting resources.

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[1] Press Release, Dep't of Just., Off. of Public Affs., Justice Department's Antitrust Division Announces Whistleblower Rewards Program (July 8, 2025), <https://www.justice.gov/opa/pr/justice-departments-antitrust-division-announces-whistleblower-rewards-program>.

[2] Whistleblower Rewards Program: Reporting Antitrust Crimes and Qualifying for Whistleblower Rewards, Dep't of Just., <https://www.justice.gov/atr/whistleblower-rewards> (last visited August 7, 2025).

[3] Memorandum of Understanding Regarding the Whistleblower Rewards Program and Procedures between the Antitrust Division United States Department of Justice and the United States Postal Service and the Office of Inspector General United States Postal Service, Dep't of Just. (May 7, 2025), <https://www.justice.gov/atr/media/1407261/dl?inline>.

[4] Mail fraud includes honest services fraud, which a Second Circuit decision recently interpreted broadly to be applicable in international fraud and corruption cases in reinstating the convictions of former FIFA executives. *United States v. Lopez*, 23-7183-cr (2d Cir. July 2, 2025).

[5] Client Alert, DOJ Updates Leniency Policy and Issues New Guidance, Crowell & Moring LLP (Apr. 7, 2022), <https://www.crowell.com/en/insights/client-alerts/more-boxes-to-check-for-leniency-applicants>.

[6] Press Release, Dep't of Just., Off. of Public Affs., Live Entertainment CEO Indicted for Orchestrating Conspiracy to Rig Bidding Process for Public University Arena (July 9, 2025), <https://www.justice.gov/opa/pr/live-entertainment-ceo-indicted-orchestrating-conspiracy-rig-bidding-process-public>.

[7] Press Release, Dep't of Just., Off. of Public Affs., Florida Fuel Supplier Charged in Multimillion-Dollar Scheme to Defraud U.S. Department of Defense, other Federal Agencies (July 9, 2025), <https://www.justice.gov/opa/pr/florida-fuel-supplier-charged-multimillion-dollar-scheme-defraud-us-department-defense-other>.

[8] Client Alert, DOJ and HHS Launch FCA Working Group: Heightened Enforcement Risk for Health Care Entities, Crowell & Moring LLP (July 8, 2025), <https://www.crowell.com/en/insights/client-alerts/doj-and-hhs-launch-fca-working-group-heightened-enforcement-risk-for-health-care-entities>.

[9] Procurement Collusion Strike Force, Dep't of Just., <https://www.justice.gov/atr/procurement-collusion-strike-force> (last visited August 7, 2025).

[10] Client Alert, DOJ Announces Antitrust Strike Force Focused on Public Procurements, Crowell & Moring LLP (Nov. 6, 2019), <https://www.crowell.com/en/insights/client-alerts/doj-announces-antitrust-strike-force-focused-on-public-procurements>.

[11] Client Alert, "Help Wanted": Justice Department Debuts its Corporate Whistleblower Awards Pilot Program, Crowell & Moring LLP (May 13, 2025), <https://www.crowell.com/en/insights/client-alerts/doj-reprioritizes-corporate-enforcement-with-key-policy-revisions>.

[12] Client Alert, DOJ Reprioritizes Corporate Enforcement with Key Policy Revisions, Crowell & Moring LLP (Aug. 2, 2024), <https://www.crowell.com/en/insights/client-alerts/help-wanted-justice-department-debuts-its-corporate-whistleblower-awards-pilot-program>

[13] Client Alert, DOJ and HHS Launch FCA Working Group: Heightened Enforcement Risk for Health Care Entities, Crowell & Moring LLP (July 8, 2025), <https://www.crowell.com/en/insights/client-alerts/doj-and-hhs-launch-fca-working-group-heightened-enforcement-risk-for-health-care-entities>.

[14] Whistleblower Program, U.S. Sec. & Exch. Comm'n. (last updated Mar. 17, 2025), <https://www.sec.gov/enforcement-litigation/whistleblower-program>.