

## Current Whistleblower Procedures Fall Short of U.S. Strategy on Countering Corruption

Article By:

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Released in December 2021, the "[United States Strategy on Countering Corruption](#)," affirms the critical role whistleblowers need to play in fighting international corruption. Unfortunately, most federal agencies – all of which are bound by the Strategy – have not gotten the message. Far from protecting and incentivizing international whistleblowers as mandated under the Strategy, agencies such as the Department of Justice and Securities and Exchange Commission have either completely dropped the ball or (intentionally or not) approved regulations that undermine transnational whistleblowing and the goals of the Strategy.

In terms of official U.S. policy, the Strategy recognized "the fight against corruption as a core national security interest" and clearly explains why the United States needs to use its laws and enforcement authorities to combat corruption: "[Corruption] robs citizens of equal access to vital services," and contributes to "human rights violations and abuses" as well as "hollowing out institutions, corroding public trust, and fueling popular cynicism toward effective, accountable governance."

In no uncertain terms, every major executive agency, including the Departments of Justice, State, Treasury, Defense, and Commerce; Homeland Security; Director of National Intelligence; Central Intelligence Agency; Office of the Vice President; National Security Advisor; United Nations; and Office of the Chairman of the Joint Chiefs of Staff, [signed off on the Strategy's mandate](#). The White House approved the Strategy and demanded that it be implemented in a "systemic" manner."

For the first time the United States Government, on paper, is fully committed to integrating whistleblower protections and incentives into formal policies on multiple levels. For example, the Strategy calls for "aggressive enforcement action" on financial crimes, such as tax evasion and money laundering, and specifically identifies the importance of "whistleblower programs" in generating "new information." This section is a clear recognition of the importance of transnational whistleblower programs that have been highly praised by regulators and international institutions, such as the [Organisation for Economic Co-operation and Development](#) (OECD).

The Strategy establishes an obligation on every U.S. agency to "protect anti-corruption actors" including "whistleblowers" and the "investigative journalists" that whistleblowers leak information to. The Strategy commits the United States to "[stand] in solidarity with these reformers..." It goes even further and mandates as a "criteria for government to government assistance" actions taken to

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protect “journalists and whistleblowers.”

However, over the past year-and-a-half the major administrative agencies and law enforcement officials with responsibility for implementing a wide variety of transnational anti-corruption whistleblower programs have failed to act. Incredibly, some have issued rulings undermining international whistleblowers, as if the Strategy was simply parchment on a dart board. For example:

- Department of Justice (DOJ) (responsible for enforcing the Anti Money Laundering (AML) laws). Congress *required* the DOJ to implement a program to accept confidential and anonymous money laundering whistleblower claims filed from around the world. DOJ has done *nothing* to implement these procedures, leaving some of the world’s most vulnerable whistleblowers naked to retaliation.
- Securities and Exchange Commission (SEC) (transnational jurisdiction over the Foreign Corrupt Practices Act). The SEC has implemented regulations designed to undermine international whistleblowers. For example, if a whistleblower in the United Kingdom working for an international bank reports money laundering to the UK authorities, the SEC does *not* consider this a valid “voluntary” report, and can deny a reward claim under the Dodd-Frank Act, even if the SEC issues a major sanction based on the whistleblower’s information.
- SEC and Commodity Futures Trading Commission (transnational jurisdiction under Dodd-Frank). Although the Dodd-Frank statute explicitly permits whistleblowers to file reports with investigative reporters, and despite the fact that the Strategy explicitly mandates that the United States “defend” both “investigative reporters” and “whistleblowers,” these agencies have failed to implement any protections for whistleblowers who raise significant concerns to the news media.
- Department of Commerce (jurisdiction over transnational fishing violations). Since 1981 Commerce has had broad jurisdiction to pay rewards to whistleblowers who report violations of laws protecting fish, including illegal fishing that destroys coral reefs or kills endangered species. Commerce [has acted as if this law passed by Congress was irrelevant](#), and perhaps has paid one token award in over 40-years, while the oceans have been battered.
- Fish and Wildlife Service (jurisdiction to enforce international wildlife trafficking). Like Commerce they [have had jurisdiction to pay whistleblower awards for over 40 years](#). They have also dropped the ball, paying only a handful of token awards. In response to the most recent FOIA request filed by the National Whistleblower Center it appears that they have paid only 1 award of the past 4-5 years. FWS has literally fiddled with protecting informants as permitted under law, while numerous species face extinction.

Far from “standing in solidarity” with these anti-corruption actors, the current regulations and priorities of leading federal agencies sabotage these relationships.

The shortcomings of certain agencies’ internal procedures were highlighted by the OECD’s [“Phase 4 Two-Year Follow-Up Report on Implementing the OECD Anti-Bribery Convention,”](#) released in 2022. This report focused on the FCPA. Although the OECD [highly praised](#) the Dodd Frank Act’s mechanism for incentivizing and protecting whistleblowers, they noted significant problems with the implementation of the whistleblower program, recommending that “the United States consider how it can enhance protections for whistleblowers who report violations” and “enhance guidance about the variations in protections depending on the agency to which a whistleblower makes a report.”

To date, neither of these recommendations have been adopted. For example, the SEC continues to deny valid whistleblower claims based on highly technical regulations. For example, although the Dodd-Frank Act mandates that whistleblowers be paid rewards if they “voluntarily” file “original

information” that permits the SEC to sanction a corrupt actor, the SEC rules permit the SEC to deny these claims. These SEC regulations, which apparently were drafted with the full support of Wall Street insiders, unfairly target international whistleblowers for disqualification.

Currently, the Department of Treasury and FinCEN are in the process of drafting regulations to implement the recently passed anti-money laundering and sanctions whistleblower laws. It remains to be seen whether the Treasury will set an example and conform their new whistleblower program with the requirements and policies articulated in the Strategy, or simply copy the failed strategy of other agencies.

The United States Strategy on Countering Corruption marks a new era in the transnational fight against corruption. The goals of the program will remain unrealized, however, if the whistleblower procedures of the relevant federal agencies continue to directly contradict key tenants of the Strategy.

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