



FCPA, BRIBERY & MONEY LAUNDERING

Foreign Corrupt Practices Act (FCPA), Bribery and Money Laundering

U.S. enforcement agencies have long targeted foreign bribery and money-laundering as important initiatives in the fight against global corruption. Through various whistleblower programs, whistleblowers now play a critical role in aiding investigations that target violations of the Foreign Corrupt Practices Act ("FCPA"), Bank Secrecy Act, and other anti-corruption, money laundering and economic sanctions laws. In fact, to date, some of the largest whistleblower awards have been made in connection with foreign corruption investigations.

FCPA

The FCPA prohibits American companies and individuals from making payments to foreign officials for the purpose of obtaining, retaining, or directing business to any person. The FCPA applies to three categories of entities: (1) companies that issue securities in the U.S., as well as the officers, directors, employees, and agents of such companies; (2) business entities organized under U.S. laws, as well as individual U.S. citizens, nationals and residents; and (3) foreign companies and nationals that engage in a corrupt act in any U.S. territory.

In addition to the anti-bribery provisions, the FCPA also includes important accounting provisions which apply to companies with securities listed in the U.S. Under those provisions, companies must maintain accurate books and records – and to institute internal accounting controls in order to detect and prevent foreign bribery.

The Securities and Exchange Commission and the Department of Justice both maintain jurisdiction over FCPA investigations. As a result, whistleblowers can report FCPA violations through the SEC Whistleblower Program, which rewards individuals who provide the SEC original information about violations of the FCPA. Because enforcing the FCPA remains a high priority for the SEC, whistleblowers have played – and continue to play – a vital role in uncovering such violations. Both the SEC and DOJ have been active in civilly and criminally enforcing violations of the FCPA, including enforcement resulting from whistleblower reporting, with billions of dollars recovered in civil and criminal penalties against companies that violated its provisions.

It is not necessary for a whistleblower to be a U.S. citizen to be eligible for an award, and whistleblowers that are represented by an attorney may remain anonymous.

Anti-Money Laundering Act

Banks and other financial institutions are required by federal law to establish anti-money laundering controls, report suspicious activity and large cash deposits, and maintain records of financial transactions to prevent money-laundering and other unlawful uses of the banking system. Financial institutions which fail to comply with these requirements may be subject to civil and criminal penalties and forfeiture of violative assets.

With the passage of a newly strengthened whistleblower program, whistleblowers can play a critical role in combatting the pervasive problem of money laundering in the global financial system, and be rewarded for their efforts. The Anti-Money Laundering Act of 2020 ("AMLA") provides financial rewards and retaliation protections to whistleblowers who report Bank Secrecy Act violations to the U.S. Department of Treasury, the Department of Justice, or their employer. Recent amendments have strengthened expanded the program to apply to U.S. economic sanctions violations, specifically violations of the Trading with the Enemy Act, Foreign Narcotics Kingpin Designation Act, and the International Emergency Economic Powers Act.

The Department of Treasury's Financial Crimes Enforcement Network ("FinCEN") is the federal agency tasked with administering the whistleblower program, including receiving tips, implementing policies and procedures of the program, and processing and approving award applications.

Unlike whistleblowers under the False Claims Act, AMLA whistleblowers are required to report the alleged AMLA law violation to their employer or to the U.S. Department of Treasury or Department of Justice, rather than file a lawsuit under seal. The AMLA provides mandatory rewards for whistleblowers who provide original information about an anti-money laundering law violation that leads to a successful enforcement action resulting in at least \$1 million in monetary sanctions. The AMLA also includes protections for whistleblowers from retaliation by their employers for reporting violations.

Who can be an AMLA whistleblower?

Anyone who voluntarily provides original information about a violation of the AMLA laws and regulations to the Department of Treasury, Department of Justice or their employer is eligible to be a whistleblower. The whistleblower may, but need not be, an insider of the entity violating the AMLA law, and may be eligible to be a whistleblower even if they report the information as part of their regular job duties. Non-U.S. citizens and foreign nationals are eligible to be whistleblowers, and the alleged violation of the AMLA laws may occur outside the country so long as there is jurisdiction in the U.S.

Can an AMLA whistleblower remain anonymous?

Yes. Like the SEC and CFTC whistleblower programs, AMLA whistleblowers who are represented by an attorney may remain anonymous. The AMLA whistleblower law also requires the U.S. Department of Justice and U.S.

Department of Treasury to protect the confidentiality of whistleblower submissions, by not disclosing any information provided by a whistleblower that could reasonably be expected to reveal the identity of the whistleblower, except in limited circumstances.

What is “original” information?

The AMLA Whistleblower Program seeks “original” information, which means information derived from the whistleblower’s own knowledge or own independent analysis and not already known by the U.S. Department of Treasury or Attorney General from any other source. This means that a whistleblower can provide information that, for example, the whistleblower learned through their employment, or that the whistleblower was able to uncover through their own investigation and knowledge. Original information may include, but may not exclusively be derived from, information which is in the public domain, such as from a judicial hearing, government report, or news media, unless the whistleblower is a source of the information in the public domain.

Are there protections for retaliation against AMLA whistleblowers?

Yes. Whistleblowers who are retaliated against by their employer for reporting violations of the AMLA laws and regulations internally to their employer or externally to a federal agency or Congress are entitled to reinstatement, double back pay, compensatory damages, and attorneys’ fees.

Whistleblowers must first file an AMLA retaliation claim with OSHA, and may remove the case to federal court after 180 days have passed from the filing date.

What type of fraud is covered by the AMLA whistleblower program?

The AMLA whistleblower program covers violations of anti-money laundering and economic sanctions laws and regulations, such as, violations of the Bank Secrecy Act, Trading with the Enemy Act, Foreign Narcotics Kingpin Designation Act, and the International Emergency Economic Powers Act. These violations may include:

- Failure to implement a Bank Secrecy Act compliance program in accord with the “Five Pillars” of anti-money laundering compliance
- Systemic non-compliance with Bank Secrecy Act recordkeeping and reporting requirements, such as Suspicious Activity Reports
- Violating U.S. economic sanctions laws, by engaging in trade or financial transactions with sanctioned nations or entities

The AMLA whistleblower program specifically applies to conduct that predates the passage of the AMLA whistleblower program. Since AMLA violations may also be covered under the SEC and CFTC whistleblower programs, AMLA whistleblowers may also file under those programs as well.

If you would like to speak to a member of our whistleblower group about a potential whistleblower matter, please contact us to schedule a case evaluation. All case evaluations are confidential and free.