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SEC's Whistleblower Chief Manages Growing Pains as Program Gains Popularity

In one of her first media interviews, Nicole Creola Kelly says the program treats every tipster equally

By [Mengqi Sun](#) [Follow](#)

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Nicole Creola Kelly has worked at the Securities and Exchange Commission for a quarter-century in a variety of roles. Now, as head of the agency's whistleblower award program, she is facing perhaps her biggest challenge: critics who say the program favors those with connections to the regulator.

Established by the 2010 Dodd-Frank Act to encourage the reporting of financial wrongdoing and preventing the types of oversight lapses that led to Bernard Madoff's multibillion-dollar Ponzi scheme, the SEC's award program has given out more than \$1 billion in total to whistleblowers as the number of tips it receives has steadily risen.



Nicole Creola Kelly, the chief of the SEC's Office of the Whistleblower. PHOTO: SECURITIES AND EXCHANGE COMMISSION

But with that success has come greater scrutiny. The SEC program's process of determining who receives awards has come under the spotlight in recent years in both circuit courts and law studies. A legal research paper found that almost a quarter of the SEC's whistleblower awards have gone to law firms with attorneys who have connections to the regulator, potentially deterring other whistleblowers from coming forward. Recent appeals court judgments also have broadly questioned how the agency decides

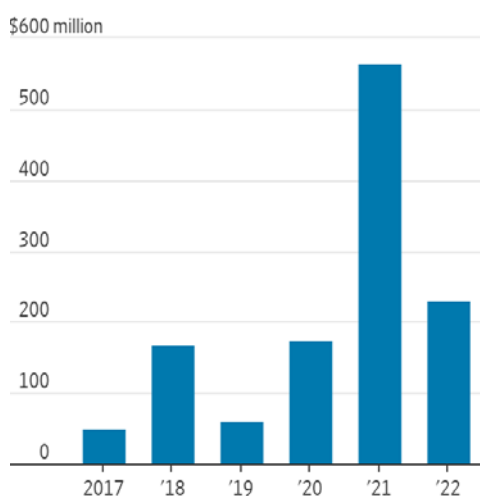
who receives awards.

Kelly faces the challenge of managing the increasing popularity of the whistleblower program with her office's current staffing resources, industry participants said. At the same time, she is under pressure to address calls for transparency in the program's processes and the need to protect the identities of whistleblowers.

“I’ve been here for 25 years. I’ve seen many chairs, and as a longtime civil servant...it sounds cliché but we call the balls and strikes,” Kelly, who goes by “Cree,” said in a recent interview. “At no point have I ever considered who the counsel is on a recommendation. It doesn’t factor into our analysis.”

Kelly joined the SEC in 1998 as an attorney in its enforcement division. Over the years, she has held several positions at the commission, including in the enforcement division’s complex financial-instruments unit and as counsel to then-SEC commissioner Kara Stein. She also was part of the staff at the SEC general counsel’s office that reviews recommendations on awards made by the whistleblower office before they are submitted to the commission for final determination.

Approximate amounts of SEC awards to tipsters by fiscal year



Note: Fiscal year ends on Sept. 30

Source: Securities and Exchange Commission

The SEC received more than 35,000 tips from whistleblowers and others in fiscal 2022, more than double the number in 2016, according to testimony by SEC Chair Gary Gensler in July. And the sizes of awards are growing. In May, the whistleblower program issued a record \$279 million award to an individual that helped U.S. authorities bring a bribery case against Swedish telecommunications company Ericsson.

Some critics of the program say those awards, however, sometimes aren’t fairly handed out. Alexander Platt, associate professor of law at

University of Kansas School of Law and author of the study on the “revolving door” between whistleblower lawyers and the regulator, questions whether the SEC has protocols or policies to prevent individuals who have lawyers that previously worked at the agency from receiving special treatment. His study was published earlier this summer in the Yale Journal on Regulation.

“When I’m criticizing and asking questions, it’s not because I think the program is fundamentally flawed, I think it’s the opposite; it’s such an important program that we should make it work as efficiently as it can,” he said. “And this revolving door question is an area where more transparency and accountability could improve the program.”

Kelly defended how the program decides on awards, saying that it treats every whistleblower equally, whether or not they have counsel, and doesn’t consider who represents them in its decisions to award corporate tipsters.



The SEC received more than 35,000 tips from whistleblowers and others in its last fiscal year. PHOTO: ANDREW HARRER/BLOOMBERG NEWS

“When I hear about this, the revolving door in our space, I think it’s interesting because it’s never occurred to any of us to favor anybody. I think what’s interesting is that I don’t think people appreciate this enough...that when a whistleblower comes forward, they might have potential exposure. We pay whistleblowers to have culpability,” Kelly said.

She also said that such risks mean that whistleblowers need smart counsel to help them navigate the process, which often includes government investigations and possible charges—and sometimes these lawyers have experience in government—similar to those providing defense for white-collar-crime defendants.

Kelly added that her office adjudicates these claims in a consistent manner, so that similarly situated individuals receive similar treatment, adding that this level of predictability is essential for the program to be successful.

Colleagues point to Kelly’s years of experience at the agency, which they say could be a key factor for the program’s continued growth. Kelly was skilled at determining what it took to make an enforcement case, said Mary Jo White, who was the SEC chairman during the Obama administration and tapped Kelly as an enforcement counsel between 2015 and 2017. White, now a partner at law firm Debevoise & Plimpton, said Kelly not only has creative ideas in proving intent, she also has “a real empathy for victims of securities fraud.”

“She’s really gained the trust in the office and she’s perfect for that job,” White said, adding that the whistleblower program has been a game changer for the SEC, enabling it to bring cases it wouldn’t have otherwise been able to.

Kelly’s priorities in her latest role at the regulator include processing award claims faster to issue awards more closely to the time of settlement announcements and continuing to expand the program. The office has about 19 full-time employees and is looking to increase it to about 25 people, she said.

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— Nicole Creola Kelly, chief of the SEC’s Office of the Whistleblower

The speedier processing of awards has been noticed by some lawyers who represent whistleblowers in the claims process.

“In general, we have seen a marked decrease of the pipeline. They are going through the system a lot quicker,” said Christopher Connors of Connors Law Group, who represents whistleblowers. “There are outliers obviously, but in general I can safely say that we see a significant decrease in the time it took to process these awards.”

“Due to [several] factors, the increasing number of tips, the limited resources and the desire to not invoke the false accusations that insiders are getting special privileges, I think she has to be more circumspect than the previous chairs,” Rebecca Katz, the head of the SEC whistleblower practice at law firm Motley Rice, said, adding that Kelly seems to have limited her direct engagement with whistleblower bar lawyers.

Kelly, who has appeared on panels speaking to whistleblowers and their lawyers, said that despite the challenges and criticism the program has received, her staff remains dedicated to the mission of the office.

“We know how valuable whistleblowers are and so that’s why we jump through hoops, often to meet much criticism to protect whistleblower confidentiality,” she said. “We advocate for the whistleblowers in protecting their identity while also making very balanced and strong recommendations to the commission.”

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