

'Transparency for thee, not for me': Study shows SEC mounting secrecy about whistleblower program

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The nation's leading financial regulator is facing a transparency crisis of its own. According to a new study by a University of Kansas law

professor, the U.S. Securities and Exchange Commission is becoming increasingly secretive regarding some of its own activities—even as it is increasingly aggressive in demanding disclosures from private actors.

The study by Alexander Platt, associate professor of law at KU, shows how the SEC's most recent annual [report](#) on its whistleblower program is the least transparent in the history of the program.

The whistleblower program encourages people to share information about financial malfeasance with the SEC by offering monetary payments for tips that lead to successful SEC enforcement actions. The program has recently come under fire for its excessive secrecy, which some fear has tilted the playing field in favor of well-connected repeat players. Last summer, one member of the commission cited Platt's earlier study of the program in a speech calling for increasing transparency surrounding the program.

But rather than expanding transparency, the SEC has done precisely the opposite, according to Platt. As he shows in his new study, which was featured on the Columbia Law School Blue Sky Blog, the SEC's Fiscal Year 2022 report on the whistleblower program omitted a wide range of significant information that had been included in every prior annual report.

This year's report is the first not to disclose how many insiders and how many outsiders received whistleblower awards. Platt said that, although policymakers tend to emphasize the program's role in getting individuals to come forward with actionable information about their corporate employers, no employment or other direct connection to the target is necessary to qualify for an award.

"Are whistleblower awards actually incentivizing current employees and other insiders to come forward? Or are they compensating outsiders like

activist short-sellers who may have already profited? The public deserves to know," Platt said.

Similarly, the most recent report is the first to omit information about the extent to which tipsters first reported the fraud internally at their companies before coming forward to the SEC. As Platt wrote, because the whistleblower program does not require individuals to report internally, there has been a steady concern that the program would undermine corporate compliance programs.

Other key information excluded for the first time from the report includes the proportion of awardees whose tips led to the detection of new frauds (as opposed to merely helping prosecute frauds that had already been detected), the number of tips received from each U.S. state and each foreign country, the number of ongoing investigations related to tips received through the program and the staffing of the whistleblower program.

"This report signals a further retreat from the already low levels of transparency the SEC had been providing," Platt said. "We need to ask why."

In the absence of an explanation from the SEC, Platt said everyone is left to speculate as to why this information is suddenly being kept secret. One possible reason is agency staffing issues. The SEC's inspector general recently found that SEC's aggressive rulemaking agenda under Chair Gary Gensler has compromised "other mission-related work," with rule-making teams borrowing staff from other areas in the organization to assist them.

"Writing these reports is not necessarily the sexiest task, and perhaps it's one of the things that has been shortchanged at the expense of higher-profile stuff," Platt said.

But, Platt said, the transparency gap may also be part of a broader pattern of impatience with traditional mechanisms of participation and accountability, as signaled by the agency's controversial recent efforts to shorten the public comment period on major rule proposals.

Platt compared the situation to an annual holiday letter providing updates about various family members.

"If you get a letter from someone every December and then one year it just conspicuously fails to mention a spouse or child, you'd probably be a little concerned," Platt said. "For all its mystery, the FY 2022 report is blindingly transparent about one thing: The SEC is not taking seriously the criticisms that the whistleblower program's excessive secrecy is a problem."

The research is available as a working paper on the *SSRN Electronic Journal*.

More information: Alexander I. Platt, Going Dark(er): The SEC Whistleblower Program's FY 2022 Report is the Least Transparent in Agency History, *SSRN Electronic Journal* (2023). [DOI: 10.2139/ssrn.4350144](https://doi.org/10.2139/ssrn.4350144)

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