**Report Homeland Security Fraud**

**How to report fraud against the Department of Homeland Security (DHS) for a whistleblower reward or anonymously**

**By Joel D. Hesch, Esq.**

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*Disclaimers.* The views expressed by the author are his own personal beliefs. This book should not be construed as legal advice. Each case is unique and must be evaluated on its own merits. Past amounts of recoveries do not guarantee future rewards. You should consult an attorney experienced with the Department of Justice Whistleblower Reward Program, before deciding whether to file for a reward.

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**Why report Homeland Security fraud?**

Fraud against the Homeland Security affects us all. Ten percent of all federal spending, including on Homeland Security, is lost due to fraud. Because the government is spending over $44 billion a year for the Department of Homeland Security (DHS),[[1]](#footnote-1) that means $4 billion a year is lost to fraud. It’s no wonder why we have a national economy crisis!

That’s also why I wrote this book*.* I worked in the Department of Justice (DOJ) Whistleblower Reward office in Washington D.C. for over 15 years and worked on cases recovering over $1.5 billion. I’ve seen and combatted fraud first hand and know what it takes for a whistleblower to successfully report fraud against the government. I left DOJ and formed The Hesch Firm, LLC to exclusively represent whistleblowers nationwide to help them report fraud against the government. I’m now sharing my insights so that together we can curb Homeland Security fraud.

First, book explains how to report Homeland Security fraud the correct way in order to get the attention of the government and ensure that an investigation takes place.

Second, this book puts fraud-doers on notice that the public is fed up with Homeland Security fraud and is now armed with information on how to report it. Given that there are sizable monetary rewards being offered by the Department of Justice (DOJ) for reporting Homeland Security fraud, there is a strong incentive for whistleblowers and law firms to take a stand. The more whistleblowers step forward to claim rewards, the less likely companies will try to cheat because they will finally realize that they can’t get away with it anymore.

The money stolen by those cheating the Homeland Security comes out of your pocket, as a faithful citizen and taxpayer. Worse yet, for every dollar lost to Homeland Security fraud is one less dollar available for other worthy government programs, such as health care or the military. Are you willing to put up with that or do you want to do something about it?

It’s time to put an end to fraudulent Homeland Security claims! Here’s how you can be part of the solution.

This book is provides step-by-step instructions for reporting Homeland Security fraud, either for a reward or anonymously. It outlines in detail the Department of Justice (DOJ) whistleblower reward program as well as how to report fraud directly to the Homeland Security. It is your one resource for all you need to know about reporting fraud against the Homeland Security.

Let’s begin.

**Two ways to report Homeland Security fraud**

There are two ways to report Homeland Security fraud. They are drastically different, with different ways of reporting and different results. This book explains both methods, and describes the *pros* and cons of each. It also walks your through both methods with detailed instructions on how to apply for a significant reward.

The first method is to report Homeland Security fraud under the U.S. Department of Justice (DOJ) whistleblower reward program. The second is to report fraud directly to Homeland Security.

As an initial matter, only the DOJ reward programs pays rewards. The average reward under the DOJ program for reporting fraud against the military, which includes in the statistics Department of Defense and Homeland Security, is $320,000. Rewards have hit close to $50 million in a single case. On the other hand, there is no reward for reporting fraud directly to Homeland Security. There are other significant differences between the DOJ reward program and reporting fraud directly to Homeland Security beyond rewards, which are discussed in the next chapters.

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**Reporting Homeland Security fraud to DOJ for a reward**

Because the federal government only catches a small amount of fraud, Congress passed a law known as the False Claims Act (FCA) requiring the Department of Justice (DOJ) in Washington, D.C., to create a Whistleblower Reward Program. The FCA mandates that DOJ pay whistleblowers that properly report Homeland Security fraud between 15 and 30 percent of what it recovers—based on the whistleblower’s information—no matter how large the recovery is. So far, the largest government rewards in a single government fraud case has topped $50 million. The government wins too, because it gets to pocket the 70 to 85 percent of the rest of the funds collected back. Today, over three-fourths of all government fraud cases are whistleblower reward cases. Thus, DOJ is counting on you to bring Homeland Security fraud cases for a DOJ reward.

The DOJ reward program goes like this. Assume a Homeland Security contractor cheats on a contract by $10 million. If you properly follow the steps in reporting it, your reward will be between $1.5 million and $3 million and the government gets to keep $7 to $8.5 million. Now that is a great return on investment for the government because without the whistleblower, it would not have been aware of the fraud or recovered anything back.

Many whistleblowers don’t want rewards, but simply to put an end to Homeland Security fraud. That is a great attitude. However, there actually are some very good reasons to apply for a Department of Justice (DOJ) whistleblower reward.

First, the only way to ensure that the government not only opens an investigation, but also assigns a DOJ attorney to evaluate your allegations is to apply for a reward under the DOJ reward program. To be eligible for a DOJ reward, the FCA requires that a whistleblower (through counsel) file a complaint in federal court alleging the fraud and serving the complaint on the U.S. Department of Justice. By law, DOJ must investigate every single complaint filed under the FCA reward statute. That means that a DOJ attorney is assigned to evaluate the allegations and determine if they have merit and if DOJ should take over the suit and pursue the fraud allegations. But if you don’t file for a reward, often there is not a DOJ attorney assigned.

Second, by using a whistleblower attorney to represent you, you are more likely to put together a more compelling description of the fraud and get the attention of the assigned DOJ attorney. Think about it this way, if you were a DOJ attorney assigned to investigate Homeland Security fraud, wouldn’t it matter to you if the attorney submitting the reward application had prior experience working at DOJ or had successfully obtained rewards under the DOJ reward program? The attorney signing and filing the FCA complaint is putting their reputation on the line by certifying that they investigated the allegations of Homeland Security fraud. That’s also why the DOJ reward program requires that you use an attorney to file for a reward. Your attorney will investigate the Homeland Security fraud allegations and prepare a complaint and statement of material evidence in support. DOJ relies on these documents to determine the scope of its investigation and how many resources to assign.

Third, by law, DOJ must inform your attorney of the results of the FCA investigation of the Homeland Security fraud allegations. But this is only true if you file for a reward under the DOJ program. In those cases, your attorney regularly communicates with the DOJ attorney, and can offer to assist in the investigation, such as helping DOJ draft subpoenas, review documents, and conduct legal research.

In short, the only way to ensure that anyone in the government even opens a case is to file for a reward under the DOJ reward program. Also, under the DOJ reward program, you will learn of the results of the DOJ investigation and receive a portion of the amounts collected—assuming your attorney properly filed the FCA complaint.

Here are the *pros* and *cons* of filing for a DOJ reward:

*Pros*

* DOJ must assign an attorney to investigate your allegations
* You choose your attorney to file for the reward
* Your attorney works with DOJ and urges it to take the case
* Your attorney can work on a contingency basis and cover all costs
* DOJ must keep your attorney informed of the status and results of the investigation
* Your attorney can pursue the case even if DOJ declines to take action
* You receive between 15% and 30% of the amount recovered if you properly file, with no cap on the amount

*Cons*

* It takes a long time and much energy to provide detailed information
* Your name will eventually be made know for reporting the fraud

[If at any time reading this book you are ready to ask Mr. Hesch to review your Homeland Security fraud allegations in complete confidence and ask him to consider filing for your DOJ reward, there is a chapter entitled, [**How to ask Mr. Hesch to file your whistleblower reward application**](#ask)**.**]

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**Reporting Homeland Security fraud to the agency without a DOJ reward**

If you do not want a DOJ reward and you do not want to have an attorney help you investigate or report the fraud, then you can contact the agency directly to report Homeland Security fraud. You can either fill out a form or contact the agency anonymously by calling a hotline.

The biggest benefit of reporting fraud directly to DHS is that it is easy and quick. However, the downside is that you won’t know if the government ever even opened an investigation and the government has no duty to contact you or let you know the status or results of the investigation. The only way to ensure that an investigation is opened and pursued is to apply for a reward under the DOJ program, as outlined in the prior chapter.

At the same time, not everyone is willing to become a whistleblower or spend the amount of time it takes to put together a full description of the fraud. Later chapters also explain the risks in reporting Homeland Security fraud. In addition, sometimes the fraud is too small for an attorney to take the case. Many of the most experienced Homeland Security Fraud attorneys, such as Mr. Hesch, require that the amount of Homeland Security fraud be at least $5 million to represent you. That’s because attorneys take whistleblower reward cases on a contingency basis. If the amount of fraud to the government is less than $5 million, it might not be worth it to the attorney to spend time and resources taking the case. Therefore, there is a proper time to contact the agency directly.

Here is how to contact the DHS to report fraud directly to it:[[2]](#footnote-2)

**Online:** Fill out an Allegation Form (see

[**https://hotline.oig.dhs.gov/hotline/hotline.php**](https://hotline.oig.dhs.gov/hotline/hotline.php))

**Call:** 1-800-323-8603 Toll Free

**Fax:**202-254-4297

**U.S. Mail:**

DHS Office of Inspector General  
MAIL STOP 0305  
Attn: Office of Investigations- HOTLINE  
245 Murray Lane SW  
Washington, DC 20528-0305

The DHS also has articles describing whistleblower protections, which are available at this link: [**https://www.oig.dhs.gov/whistleblower-protection**](https://www.oig.dhs.gov/whistleblower-protection).

Here are the *pros* and *cons* of reporting Homeland Security fraud to THE AGENCY instead of DOJ:

*Pros*

It is easy to call a hotline or report the fraud directly to DHS

You can remain anonymous

*Cons*

The government does not need to open an investigation

The government does not need to tell you the results of its investigation

You cannot obtain a DOJ reward simply by reporting fraud to DHS.

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**More details about the DOJ Reward Program**

Under the DOJ reward program, there is a very specific process for filing a reward for reporting Homeland Security fraud. If you do not follow every step you won’t be eligible for a DOJ reward. It begins by having your attorney file a Homeland Security whistleblower complaint and serving it upon DOJ. But this is not the same thing as calling a hotline or even sending DOJ a letter outlining the fraud. In fact, even if you trigger the investigation that leads to a healthcare provider repaying misused funds, the government cannot pay a reward unless you follow each and every step in properly filing a DOJ whistleblower complaint under the DOJ reward program.

The next several chapters take you step-by-step through the entire process, including the factors DOJ considers when investigating allegations and paying rewards, as well as how to find an attorney to represent you.

**The *Four F Factors* to receiving a DOJ reward**

If we distill the DOJ Reward Program down into its core components, there are four factors necessary for a whistleblower to gain the attention of DOJ and receive a reward. I call these key elements the *Four F Factors*:

* Filing first
* Format is fundamentally correct
* Fraud under a federal program, such as Homeland Security
* Funds are forfeited

If a single one of these *F Factors* is missing, you won’t receive a DOJ reward. That doesn’t mean, of course, that having all *Four F Factors* will guarantee you a reward. The *Four F Factors* simply have the greatest impact upon whether DOJ looks favorably upon your case. Knowing how to enhance these factors should greatly help you develop a winning submission and take a bite out of Homeland Security fraud.

**Filing first**

Congress has decided that only one whistleblower is eligible to receive a DOJ reward for each particular instance of fraud. To avoid subjectively deciding which person provided the most helpful information, the FCA reward statute favors paying the first person to file the FCA complaint.

It is this simple: If someone else already filed a FCA complaint on the same fraud allegation, you won’t be eligible for a reward. By the same token, if you file a proper complaint first, you won’t have to share your reward with anyone else. Of course, if a company is cheating in more than one way, there can be multiple rewards paid for each fraud scheme.

In some instances, the First to File rule has resulted in a race to the courthouse. However, you must guard against the temptation of rushing the application process. This first *F Factor* is only one of several barriers to becoming a successful whistleblower. It will do you little good to be the first to file an action, only to be rejected a year later when flaws surface. That’s because DOJ declines 75 percent of the reward applications because they are filled with flaws or don’t meet all of the other requirements.

Racing too hard to beat a hypothetical whistleblower can actually thwart your overall chance of receiving a reward. Still, you should not delay in contacting experience Homeland Security whistleblower reward counsel to begin the process of preparing a timely and quality application.

It is also worth repeating that the only way to receive a reward is to file a FCA complaint through legal counsel. My heart breaks each time I receive an email from a whistleblower that reads in the news that the government just settled a $50 million case based upon their information, but they never knew that they had to file for a reward. No one in the government will tell you to file for a reward, because they cannot give you legal advice. I just wished they had read this book and contacted an experienced whistleblower attorney before the case was over. If they had, they may have received rewards of over $10 million. It’s too late to ask for a reward once the DOJ case is over or if another whistleblower jumps in line ahead of you.

**Format is fundamentally correct**

As indicated earlier, many people incorrectly think that they simply need to call an agency hotline to be eligible for a DOJ reward. However, to qualify for the huge rewards available under DOJ’s program, your attorney must actually bring a civil lawsuit on behalf of DOJ alleging in detail that someone violated the False Claims Act. This is not something that can be done overnight.

There are two other important things to do besides filing a DOJ reward complaint. Your attorney needs to disclose to the government your allegations of Homeland Security fraud. Your attorney must also provide the government with a “written disclosure of substantially all material evidence and information” relating to the allegations.

More than one whistleblower has been ruled ineligible for a reward for failing to scrupulously follow these procedures. They are in fact more than mere technical requirements. The complaint and statement of material evidence serve the purpose of inviting DOJ to team up with you and your attorney. Remember, the ultimate goal is to enlist DOJ to take the case and use its resources to recover the funds wrongfully obtained by the defendant.

Hundreds of applications are filed each year and only those that shine make it to the top of DOJ’s pile. Thus, as explained in later chapters, it is important to find an experienced attorney who will help you evaluate the viability of your case before going further. Your attorney must then work cooperatively with DOJ.

Often out of inexperience, many whistleblowers and their attorneys fail to present persuasive evidence in their applications. I cannot overstate the importance that the application must be compelling to persuade the DOJ attorney to champion the case. Don’t fall prey to relying upon an inexperienced attorney who files a poorly prepared application. Of course, there is no guarantee that your application will be rewarded, regardless of your attorney’s efforts. But be sure to find an attorney who has significant experience working at DOJ or with the DOJ Reward Program—someone who will also actively help you determine whether you meet these criteria and direct you in gathering additional support prior to filing if you don’t.

**Fraud under a federal program, such as Homeland Security**

The third *F Factor* is that the whistleblower must allege (and DOJ ultimately prove) that actionable fraud occurred under a federal contract or program. There are two important elements here.

1. You must go beyond mere suspicion and actually show that the claims were false.

2. You must establish that the federal government was harmed by the fraud in a manner that can be quantified monetarily.

The DOJ reward program only applies to fraud against the federal government. It does not extend to fraud against insurance companies, such as healthcare fraud against private healthcare insurance entities. But it does apply to Homeland Security fraud. (For details about how to report other types of fraud against the government other than Homeland Security, such as Medicare fraud visit [www.HowToReportFraud.com](http://www.HowToReportFraud.com).)

**Funds are forfeited**

This *F Factor* is often overlooked, but is crucial to your hopes of receiving a meaningful whistleblower reward and to curbing Homeland Security fraud. Simply stated, the fraud-doer must repay the ill-gotten Homeland Security money or there is no reward.

Whistleblowers receive a percentage of the actual recovery in the case. That means that if the amount DOJ recovers from a wrongdoer is small, your reward will be small. Conversely, as the amount DOJ collects grows, so does your reward. In fact, there is no cap on the amount of a reward. Some whistleblowers have received $150 million for reporting Medicare fraud and $50 million for reporting DOD fraud. Here is how it works. To obtain a $2 million reward, you can expect that the defendant will have to repay $10 million.

Be mindful that if DOJ perceives your case as a small dollar suit, it may not be received with excitement. DOJ has limited resources to spend on investigations, so it may put more time into larger cases. For instance, don’t expect DOJ to spend $100,000 litigating a case where it thinks it may recover $100,000 or even $1 million. On the other hand, don’t let an attorney persuade you to allege that the case is worth millions, when it obviously to experienced counsel that it is not. Only inexperienced attorneys think they can fool DOJ into chasing after small cases by pretending they are large. In the process, you lose total credibility by overstating the case. If DOJ cannot trust your allegations of damages, why would you expect them to believe your allegations of fraud? It is very hard to earn back lost trust.

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**Other guidance and FAQ to filing for a reward**

The next chapters cover some frequently asked questions, such as how reward amounts are determined, how to hire an attorney on a contingency basis, how long it takes to get a reward, why DOJ turns cases away, and other risks of being a whistleblower. You will also learn how to contact an attorney or even [ask Mr. Hesch](#ask) to consider your case. Later chapters list examples of fraud.

**Amount of rewards: How much will I get?**

One of the questions most frequently asked by would-be whistleblowers is “*How much of a reward will I get?*” There is no simple answer, but I can give you some insights. First, I will share the average amount of rewards, and then address three main factors that will determine the actual size of any DOJ reward.

First, let’s discuss the average rewards under the DOJ reward program for reporting fraud against the Homeland Security. You might be surprised to learn that the average size of a DOJ whistleblower reward is $321,000 for reporting military type fraud. Of course, that does not mean you will receive that as a reward, or any reward, for that matter.

Here is how that number is calculated. DOJ keeps track of statistics on its reward program. According to DOJ, during a 30-year period of the reward program (1987 through 2016), there have been 1,545 Homeland Security fraud type cases in which rewards have been paid. The total amount of rewards paid to these whistleblowers was $497 million. Yes, that’s right. So far, DOJ has paid about $500 million in whistleblower rewards for reporting things like Homeland Security fraud! When you divide that amount by the number of rewards paid, it amounts to $321,000 average. But there are dangers in using averages. There have been some awards ranging around $50 million and many under $100,000. That means for every reward over $1 million there has to be ones under $1 million for there to be an average of $321,000.

Second, here are the three most important factors in determining the size of a DOJ reward:

* the amount DOJ recovers from the defendant
* the statutory range your case falls within
* the level of contribution made by you and your attorney.

Predicting your reward is very difficult, especially for a layperson or an inexperienced FCA attorney. This book will not attempt to predict your particular award because each case is unique and very fact specific. Nevertheless, based on working at DOJ in the whistleblower reward office for over 15 years (and since then in private practice exclusively representing whistleblowers), I will share insights into the process and how each of the three factors fit together.

**The amount DOJ recovers**

The single largest factor for determining the amount of a reward is how much DOJ collects from the defendant. It is the biggest ingredient because, by law, the amount of the reward must be a percentage of the funds actually recovered in the case. The amount of funds that DOJ receives from the defendant is known as the “base amount” or proceeds upon which a reward is calculated. The following example illustrates the role and importance of the base amount.

Assuming that the reward percentage is a constant at 17 percent, consider the effect of the overall reward depending on the size of the base amount (which is how much DOJ collects).

**Base Rate Reward**

$ 500,000 17% $ 85,000

$ 5,000,000 17% $ 850,000

$50,000,000 17% $8,500,000

The reward amount rises in proportion to the base size. A bigger base is always better.

Let’s increase the rate from 17% to 19% and examine the impact.

**Base Rate Reward**

$ 500,000 19% $ 95,000

$ 5,000,000 19% $ 950,000

$50,000,000 19% $9,500,000

Did you notice that the increase of two percent in the rate or whistleblower share percentage, while not seemingly insignificant, is comparatively small compared to the dramatic rise in the overall reward for a larger base? You are ten times better off receiving 17 percent of $5 million ($850,000 reward) than 19 percent of $500,000 ($95,000 reward). The point is that your reward will be largely dependent upon the base amount DOJ collects.

**The statutory ranges of rewards**

The next step is determining which level or range of rewards your case falls within. The most typical is when the government intervenes in the DOJ reward case and the defendant pays a certain amount to DOJ, either through a settlement or according to a judgment by the court. The False Claims Act states that when DOJ takes a case the whistleblower is entitled to at least 15 percent, but not more than 25 percent, of the proceeds, depending upon the extent to which they substantially contribute to the prosecution of the case.

Another range of rewards applies to declined cases, where DOJ elects not to take the case, but the whistleblower’s attorney proceeds to prove the fraud anyway. Under the FCA, your attorney can proceed without DOJ and act as a private attorney general. However, the odds of winning in a declined case are much lower than when DOJ takes the case. But in those instances where the whistleblower settles or wins the lawsuit after DOJ declines, the amount of the reward increases to between 25 and 30 percent. The whistleblower, of course, must not only be willing and able to proceed alone, but must also actually collect the funds from the defendant in order to recover a reward in a declined case.

Just how much of a reward will you receive? It is always risky to give averages because there are so many factors involved. But here goes: The average award paid by DOJ is approximately 17%. To get more than that, your attorney has to do a lot of convincing with DOJ. Again, there are a lot of factors to determine where on the continuum between 15 and 30 percent your case lands.

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**How much does it cost to hire an attorney?**

Another common question is “*How much does it cost to hire an experiences FCA whistleblower reward attorney?”* Because DOJ reward cases often take years to complete and there is no guarantee of a reward, the most common way to hire an attorney is to agree to give them a percentage of the reward. This is known as a contingency fee.

The rate of contingency fees, however, can vary greatly. Although attorneys generally don’t publicize their rates, expect the rate for an experienced Homeland Security reward attorney to charge 40 percent of the amount of a reward paid to a whistleblower. Some firms, however, have been known to charge 50 percent.

While the rate certainly affects how much you will receive, you should not select your attorney based upon the lowest contingency rate charged. Any attorney can hold himself out as qualified to do virtually any area of the law, whether it is personal injury, antitrust law, or Homeland Security fraud reward work. You will want to inquire into their background and experience. Conversely, do not make the mistaken assumption that the firm with the highest rate is better than one charging a more average rate. Most people tend to associate cost with value, but this assumption is not always justified. For instance, if you found a firm willing to take the case on a one-third cut rate but they did not convince DOJ to take the case, you will get zero reward.

What you may not know about attorney fees is that the DOJ whistleblower program permits your lawyer to collect from the defendant their attorney fees and costs incurred in the case. These fees will not reduce your DOJ award. They are collected by your lawyer directly from the defendant over-and-above the base amount DOJ recovers from the defendant. In other words, after a defendant pays DOJ a settlement amount, your lawyer will bill the defendant an additional amount for fees and costs. These fees are in addition to the contingency rate you pay your lawyer from the reward. Don’t expect to get a portion of these fees. They go to your attorney and are not part of the contingency arrangement. Your reward consists of the amount DOJ pays you, less the contingency fee percentage paid to your lawyer.

Don’t begrudge these additional fees your lawyer receives from the defendant. Your attorney will be battling against some of the largest and best law firms in the country trying to keep a fraud-doer from repaying the government. As Abraham Lincoln said, “A lawyer’s time and advice are his stock in trade.”

By taking your case, your attorney is giving up the opportunity to work on other matters at his normal billing rate. Considering that DOJ declines 75 percent of all fraud cases, your attorney is risking much to take your case. In addition, included in these costs are amounts of out-of-pocket expenses incurred, such as deposition fees and outside consultants and experts. In a normal case, the client would bear these costs.

The good news is that you keep 60% of the DOJ reward without having to expend any out-of-pocket costs assuming your attorney offers a true contingency fee rate.

**IRS Form 1099 and tax consequences**

What are the tax consequences of receiving a DOJ reward? Not surprisingly, a whistleblower reward is taxable income. Whenever DOJ pays a reward to a whistleblower, it issues to the whistleblower an IRS Form 1099. DOJ lists the full amount of the reward it paid out under the case.

The form is also sent by DOJ to the IRS listing the whistleblower as the recipient of the reward. However, Congress passed a law stating that the whistleblower may deduct from the amount listed in the Form 1099 the amount of the contingency fee paid to your attorney so that you are only taxed on the net amount received. Because tax issues are complex and subject to change, it is a good idea to contact an experienced tax accountant or advisor before relying on any regulations that have been true in the past. This is something you can typically wait to do until a settlement is imminent and your attorney is negotiating an amount of the reward with DOJ.

The next chapter outlines the general role and duties and shows why your attorney is worth their contingency fees.

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**What to expect from your attorney?**

As you weigh the decision whether to file for a DOJ reward and agree to give 40% contingency to your attorney, consider all that will be required from your attorney to prepare a proper filing and follow the case to conclusion. Below are examples of the legal work to expect from your attorney during each aspect of the DOJ Reward Program.

As you can imagine, each of these tasks requires significant experience and skill with the DOJ reward program. It will also require some effort by you, as well as staying power. You and your attorney will be earning your DOJ reward. Below are the roles of your attorney.

*Pre-Filing Stage*

• listening carefully to your story

• creating an investigative plan to build a solid DOJ reward application

• analyzing whether you can meet all of the requirements of the program

• helping you weigh personal risks against potential rewards

• evaluating who should be named as defendants

• calculating the loss to the government

• creating a custom-tailored and convincing complaint and statement of material evidence

• choosing where to file the case

• filing and serving the complaint upon the government

*Pre-DOJ Intervention*

• preparing you, as the whistleblower, for a DOJ interview

• helping DOJ gather facts and conducting legal research

• creating damage models and calculations

• meeting with DOJ to assist it in making an intervention decision

*Post-DOJ Intervention*

• addressing discovery issues raised by defendant

• preparing you for your deposition

• responding to motions by defendant

*Settlement*

• assisting DOJ in determining a fair amount of settlement

• assisting DOJ in negotiating with defendants

• discussing settlement terms

*Amount of Reward*

• negotiating a fair reward amount with DOJ

• presenting valid reasons supporting increases in the rate beyond the minimum.

This listing all of the time and effort by your attorney also validates why your attorney works on a contingency case, charges 40% of the reward, and only takes cases where a significant reward is possible. The good news is that your 60% share of a reward of $5 million would be $3 million. Not bad considering that you have no out of pocket costs if you hire an attorney on a true contingency basis.

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**How long it takes to get a DOJ reward?**

Another common question is “*How long will it take to get a DOJ reward?*” Again, every case is unique, but most cases take two years or longer by the time DOJ collects funds back and pays a reward. Many large cases have taken six years, such as when the reward is $5 million or more.

The average amount of time a case remains under seal, which means before the defendant is served with the complaint, is about two years. But even after serving the complaint, it can take another year or longer for the case to settle. Because the reward is based upon the amount collected, the reward cannot be paid until DOJ collects the funds from the wrongdoer. Thus, it can take anywhere from 1 to 6 years to get a DOJ reward. Because every case is different, there are no hard and fast rules. But for large rewards, expect it to be a few years minimum.

**Time tables**

The first point of confusion stems from the fact that the law provides DOJ with 60 days to make a decision about a reward case. That is true. But DOJ may ask the court for extensions upon the showing of good cause. Essentially, DOJ will file a series of motions providing the court with reasons why it cannot finish its investigation in 60 days or even 6 months. Courts regularly grant DOJ’s request for more time, and for good reason. After all, it is the government that is the real party in interest in these cases, not the whistleblower. In some instances, the seal has remained in place for up to six years.

While waiting for a DOJ decision, there are things your attorney can do. They should keep informed. As long as progress is being made, time is not your enemy. Rather than simply complain to DOJ, your attorney should be asking what help he can provide, such as drafting document requests, performing legal research, and calculating damages.

You may be wondering why it takes so long. That is a fair question. As you consider what goes into the government’s investigation, you’ll begin to appreciate that there is ample reason for seemingly slow pace. For instance, a prior chapter listed all of the duties of your attorney in a DOJ reward case. In short, there are no shortcuts to receiving a significant reward.

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**Why DOJ rejects cases?**

DOJ turns away more reward applications than it takes. From a pure statistical point of view, DOJ turns away 75% of applications. There are several reasons why DOJ turns away cases, and an experienced Homeland Security fraud reward attorney can help you evaluate if you have the right type of a case and work hard to position you to put your case in the best light so that it is properly evaluated by DOJ. Here are some of the more common reasons why DOJ rejects cases.

**The lack of documents**

DOJ has never collected millions of dollars from an entity cheating Homeland Security without documents. In fact, documents are the heart of a Homeland Security fraud case. In my experience, DOJ gets more interested in Homeland Security fraud allegations when the whistleblower supplies DOJ with copies of key internal company documents that the whistleblower obtained through their normal duties working for the company. It is much harder to convince DOJ to issue a subpoena or assign investigators to do interviews without receiving documents from the whistleblower at the outset of the case. Of course, you should talk to your attorney about whether to copy documents and what types of documents to copy.

Why are documents so important? It is rare for a defendant to simply admit to wrongdoing and offer to repay millions of dollars. In virtually every fraud case I handled at DOJ, someone lied or suffered from intentional amnesia when questioned about the allegations. Yet, the one thing that never lied or conveniently “forgot” was the internal company documents created at the time of the events in question.

Documents also support your allegations. Remember, because you get a portion of the amount DOJ collects, the defendant will argue that you are biased or making it up just to get a reward. Documents provide the corroboration needed to not only win the case, but get DOJ more interested in issuing subpoenas or interviewing witnesses.

**Resources**

At times, DOJ turns away a case because it has limited resources and can only work hard on so many cases at a time. There are many Homeland Security reward applications filed each year and DOJ has only so many attorneys working in the reward office. Certain judgments must be made upon the potential merits of a case. That begins with how specific the whistleblower’s complaint is regarding the scope of the fraud, whether there are documents attached, and how well it is presented to DOJ. Certainly every compliant gets a fair shake, but obviously some deserve and receive more attention than others. Rather than stew about this fact, hire quality counsel and present your case in a manner demonstrating it is worthy of the time and resources necessary to win a big fraud case.

**Size of the case**

A common problem with many complaints is that they fail to show any actual loss or damages to the federal government. Most simply say that the loss is in the millions or that it is substantial. Very little effort or time, however, is spent on discussing precisely how Homeland Security or Medicaid was actually harmed and how this harm can be quantified.

This deficiency sometimes is the result of the whistleblower’s attorney being unfamiliar with Homeland Security program and, as a result, not knowing how to calculate the loss. Often, inexperienced whistleblower reward counsel brings fraud cases to DOJ in which there are little or no damages to the government. The whistleblower is chasing a dead end.

Think about this issue in another way: If you cannot provide evidence of specific damages, what amount of reward do you hope to receive? Fifteen percent of nothing is nothing.

**Facts of the case**

There are a variety of other reasons why the whistleblower’s facts may warrant DOJ turning down a case.

First, the facts are often just flat out insufficient to state a claim. That’s why you need an honest appraisal from an experience attorney.

Second, a significant problem with many cases is that they do not show that the defendant knew the claim was false. Absent guilty knowledge, there is no violation of the Act. Innocent mistakes and honest disputes simply are not actionable under the False Claims Act. Remember, statute is fraud based. It does not cover every situation where there is a mere overpayment. The government needs and depends upon your inside information. Don’t file a reward complaint without it.

Third, many applications also fail to meet one or more of the *Four F Factors* and procedural and substantive requirements of the False Claims Act, such as failing to allege a required element of the law in the complaint or failing to plead the details of the fraud, such as the who, what, where, when, and why? If the complaint does not set forth allegations that establish fraud, how much weight should DOJ give it? The cure is to enlist qualified counsel before filing suit; someone who can identify what is missing and create a plan for obtaining it.

Last, a remarkable number of complaints look as if they have been slapped together without careful thought or examinations. If the complaint your attorney drafted is obviously a pastiche of generic allegations, why would you expect DOJ to put two years of effort into something you and your counsel didn’t care enough about to tailor to the case at hand? Similarly, a poorly worded complaint cannot help but give DOJ the impression that the underlying facts and allegations most likely reflect the same slipshod quality. There are many Homeland Security reward complaints filed each year fighting for the attention of DOJ Civil Fraud lawyers. It is inevitable the DOJ attorneys will take most seriously the reward application that are obviously professional, well-informed and thoroughly prepared.

**Statute of Limitations (time limits)**

There is another limitation you should know about. The False Claims Act contains a statute of limitations that bars allegations that are older than ten years. In some instances, the limitation is only six years. If your claim is older than the applicable statute of limitations, the company will not need to repay the funds; therefore, you cannot recover a reward. Therefore, it is important to know when the false claims were submitted and only allege fraud within 6 to 10 years from when you file for a reward.

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**Personal risks for reporting Homeland Security fraud**

Before filing for a DOJ reward is the time to assess whether the potential rewards outweigh the risks. This section outlines some of the key risks, allowing you to move forward with both eyes open. Of course, there is no safer or better way of assessing the risk than through a confidential conversation with an experienced attorney.

**Your name will be made known**

One of the most significant risks you face is that your name will eventually be made known. Unlike an anonymous tip to the agency, to claim a reward under the DOJ whistleblower program, your attorney must file a lawsuit on behalf of the United States.

Your name goes into the caption, which reads something like this:

*United States, ex rel. [Your Name], Plaintiffs, versus [Company Name], Defendant.*

Initially, the complaint will be sealed. During that period both your name and that of the defendant will kept from the public. At some point, however, DOJ will ask the court to unseal the complaint. Once unsealed, the whole world can access the case. If DOJ intervenes, it will serve a copy of the complaint upon the defendant with the same caption.

The government has a policy against keeping cases permanently under seal. Therefore, even if the government declines and you drop the case, it is likely that the defendant will be able to get a copy of what you filed.

The effect may extend beyond your current employer. Although times are changing, being labeled a whistleblower can negatively affect your reputation in some industries. Some companies may not want to hire someone who has filed a lawsuit against their employer. Therefore, you’ll definitely want to think through this risk and hire seasoned counsel to advise you before filing a complaint.

**Time and energy**

Another risk is that filing a lawsuit will require much of your time, energy, and emotional investment. Before filing, you must ferret out the facts and help your attorney put together a convincing case showing that there was fraud and that it resulted in a significant loss to the federal government. You’ll also be called upon to help with issues at various times throughout the entire time a case is ongoing. It can add up to many hours.

Although it is hard to quantify, the emotional stress that goes along with being a party to a lawsuit is incredible. It’s constantly on your mind. Even before the case is made public, you will have an emotional ride. For instance, because FCA reward cases must be filed under seal, you cannot talk to anyone about it until the seal is lifted, perhaps two years later. The need to stay silent about something so important to you can result in discouraging feelings of loneliness and isolation.

After a case is unsealed, you will be able to discuss the case, but your energy and emotions will be further taxed. You may worry about what others think about you. You may face new challenges at work or home. If you are working for the company being sued, you may find that they ask your co-workers to find fault with your work performance.

The legal requirements can be wearing as well. It is never fun to have your deposition taken. If the case does not settle before or at the time that DOJ intervenes, the lawyers for the defendant will certainly take your deposition. You may be asked questions under oath for an entire day. Although you will be accompanied by your attorney and given reasonable breaks, it won’t be a pleasant experience.

**Risk of retaliation**

The FCA whistleblower law has a special provision that permits special damages to an employee who was “discharged, demoted, suspended, threatened, harassed or discriminated” because of assisting in a whistleblower case or investigating whether to bring a fraud case. The False Claims Act permits not only reinstatement, but permits two times the amount of back pay, plus other costs, and attorneys fees. Of course, to rely upon the remedies in these statutes, you would have to file a suit to be reinstated and collect these penalties.

There is a good reason why Congress needed to include this type of a provision: it is not unusual for wrongdoers to consider retaliation against whistleblowers. The fact that there is a rule requiring double damages may not be enough to prevent retaliation. It is possible to lose a job or be passed over for promotion, regardless of pointing out to your employer that you think their conduct has violated the whistleblower law.

Even if the treatment does not amount to retaliation, you may find it uncomfortable to stay at your job. You could be ostracized or given mundane work. The loss of employment is a real issue to consider before filing a DOJ reward case. It is also possible that a defendant would file a slander lawsuit against a whistleblower. Although truth is a defense to slander and libel, it can be upsetting and costly to litigate.

**Risk of paying attorney fees and costs**

The FCA whistleblower law provides that, if the government declines to intervene and the whistleblower still proceeds with the case, the court may award the defendant reasonable attorneys fees and expenses, if the defendant wins the case and your claim was “clearly frivolous, clearly vexatious, or brought primarily for the purposes of harassment.” Again, this does not mean simply losing the case, but acting with improper motives. In addition, this risk can be totally avoided if the whistleblower agrees to drop the case if DOJ does not take it over. That is the safest course of action. It is followed 80 percent of the time by whistleblowers. This is another reason why you need to hire experienced FCA reward counsel that not only knows of the risks but how to avoid many pitfalls.

**The odds are against you**

Based upon statistics, the odds are against you receiving a reward. First, DOJ declines to take over 75% of applications. In those instances, your attorney may still proceed, but that only happens about 10 to 20 percent of the time due to other risks outlined in this book.

The good news is that the likelihood of a reward goes up dramatically if DOJ intervenes in your case. DOJ wins almost every case it takes.

In addition, the amount of a reward might not be as high as you hope. Although the average reward amount is reported to be $320,000, other statistics paint a different picture. The reason the average amount is so high is that there have been several rewards of $100 million. For every $100 million jackpot, there are some under $100,000. Actually, the “mean” or “median” reward amount is probably closer to $250,000. You will also need to pay your attorney and taxes out of the reward amount. That’s why The Hesch Firm only takes cases where the fraud is $5 million, which would put the reward at about $1 million.

The point is that you cannot judge your case based upon statistics. And your decision to file should not be based solely upon whether you might get $250,000 versus $20 million. The new breed of whistleblowers desire to see the right thing done. They accept the patience and resolve needed to team up with DOJ in seeing justice prevail.

What you need most at this point is not more statistics, but the honest appraisal from an experienced whistleblower attorney. Ask your attorney to evaluate the risks based upon your facts and to provide you with the reasons for his estimates of whether DOJ may intervene and what the case might be worth.

**Money doesn’t buy happiness**

Many people play the lottery hoping to cash in so they can kiss their jobs goodbye. They dream of a blissful life the winnings are supposed to provide. You may have similar goals in mind when deciding whether to file a DOJ reward case. However, as the old saying goes, “Money doesn’t buy happiness.” If you were to interview everyone who received a million dollar reward or won a lottery, very few would say they are truly happier today.

Reporting fraud may be the right thing to do, but that does not mean becoming rich will bring peace to your life. There are simply greater things in life than wealth, such as family, country, and God. In short, there is a high cost to be paid — certainly emotionally and perhaps financially — for blowing the whistle. Also, if you treat the case as a lottery ticket, you won’t invest the time and energy needed to win.

Perhaps the best reason to report fraud is not to obtain a reward, but to satisfy a feeling inside that shouts, “I cannot just look the other way.” Following your conviction is the best medicine for enduring the risks associated with standing up and reporting fraud.

In sum, weigh your decision carefully. Seek solid legal and practical advice from your attorney. In the end, however, the decision must be your own.

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**The need for selecting the right attorney to evaluate your DOJ reward case**

DOJ wants you to file a whistleblower complaint if you have specific details of significant Homeland Security fraud, and it wants to pay you a reward. However, by law, a reward can be paid only if you follow the exacting procedures contained in the False Claims Act statute as outlined in this book.

If you are not sure if you have the right type of a case to file for a DOJ reward or you simply want an honest appraisal of your potential case, you should contact an attorney in confidence to evaluate your case. You can do this in privacy. You don’t need to file a DOJ reward case simply because you contact an attorney to evaluate your case. In addition, under ethical rules for lawyers, the information you provide to them is protected by the attorney client privilege, even if you don’t end up hiring them or never file for a reward. In addition, the information you provide to an attorney cannot be used for any other purposes.

Selecting the right attorney is probably one of the most important aspects of receiving a reward and minimizing risks. It can be challenging to find one that is right for you. You will want to select someone you trust, who allows you to feel comfortable asking questions. You also want to select someone you believe knows how to investigate the false claims, determine whether you have a claim, and present it convincingly to DOJ. There are many subtleties to address and pitfalls to avoid in the selection process. Your attorney will need to prepare a solid application to gain DOJ’s initial interest. They will need to work closely and directly with DOJ in a cooperative relationship throughout the process, culminating in negotiating a fair reward. Be sure your attorney understands the policies of the DOJ Reward Program, the practical procedures of DOJ, and the workings of the governmental agency or program where fraud occurred.

Not only should you select someone who has worked for DOJ in the reward office or has significant experience winning cases under the DOJ reward program, but it is important to select an attorney you feel comfortable with. The case may take years to complete, so you will want to select someone who can realistically provide you with estimates and solid advice. You also want to feel like the attorney has your interests at heart, not just an opportunity to share in a reward you might obtain.

The next chapter shows you how to contact Mr. Hesch to evaluate your DOJ reward case.

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**How to ask Mr. Hesch to file your whistleblower reward application**

Mr. Hesch and his team of attorneys would be pleased to review your information in complete confidence and help you determine if you have the right kind of information to receive a significant DOJ reward and file your Homeland Security whistleblower complaint.

This section explains the criteria The Hesch Firm, LLC uses to evaluate potential reward cases and how to contact Mr. Hesch directly to ask him to consider your case.

**Two Requirements**

First, please note that The Hesch Firm does not handle whistleblower cases where the amount of fraud is under $5 million. Otherwise, the reward will be less than $1 million and is not worth the risks.

Second, Mr. Hesch does not take cases from whistleblowers that did not work for the entity that committed the fraud.

**How to Contact Mr. Hesch**

If you worked for the company committing the fraud and the amount of overbilling to the government was $5 million, please contact Mr. Hesch via his private email address:

[Joel@HowToReportFraud.com](mailto:Joel@HowToReportFraud.comReportMedicareFraud.com).

Below is a list of all the information you must put in your email in order for Mr. Hesch to be able to respond to you. However, please do not include the name of the company engaged in fraud. Mr. Hesch will request additional information after reading your email or set up an interview.

Include in your email a separate paragraph for each of the following five items:

1. **Explain in detail the fraud allegations**.[Please be specific and very detailed in describing the fraud, but without mentioning the name of the wrongdoer.]
2. **Estimate how much money the government wrongfully paid out**. [Do your best to estimate damages and indicate how you came up with it.]
3. **State whether (and what type of) documents you have to help prove the fraud**.
4. **State whether you still work for the entity**. [If you left, state when you left and why.]
5. **State whether you talked to another attorney about reporting the fraud**? [If so, state the status of your communications with other attorneys.]

The Hesch Firm will treat your information confidential. The law treats your communication with Mr. Hesch as protected and privileged during the time you are contacting legal counsel to seek to obtain representation. Mr. Hesch will not use your information for any other purposes than determining if he can represent you even if you decide not to hire him or file for a reward.

The reason Mr. Hesch needs this information upfront is to initially gauge the nature, size and strength of your case. This information will facilitate any future discussion you have with his law firm. After The Hesch Firm reviews your email, they will contact you. The first contact with you will be by email, so be sure to use an email address that you will check and that it is private. [Do not use an email associated with your employer.]

Mr. Hesch will endeavor to personally review every email containing the requested information and will send you an initial email either arranging for a telephone interview by himself or one of the trusted attorneys working with him on Homeland Security fraud reward cases or explaining that it is not the type of case he can represent you.

The last section of this book, entitled About Joel D. Hesch, Esq.,contains more information about the qualifications of Mr. Hesch and lists the fraud cases he worked on both as an attorney for the U.S. Department of Justice (DOJ) for 15 years and now in private practice exclusively representing whistleblowers. As shown in that section, the reward cases Mr. Hesch worked on total over $1.7 billion.

**Disclaimer**

Although we will treat the information as confidential, the transmission of any information is not intended to create, and receipt does not constitute, an attorney client relationship. Even if you submit information to The Hesch Firm, that does not make us your lawyer. Instead, we will use your information to investigate the matter and determine whether we can and will represent you in bringing your whistleblower case. Only once we both sign a written agreement will we actually become your lawyer and advocate. A fraud case can take a number of years from start to finish and it can be expensive for a lawyer to take a case. Therefore, we conduct a thorough analysis of cases and we do not accept every case. It may take time to evaluate your questionnaire, and we may be busy on other matters at the time you send your information. If our time constraints do not fit your needs, you may wish to discuss your matter with another attorney.

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**Examples of Homeland Security Fraud**

Below lists examples of the ways entities cheat Homeland Security. The ways companies cheat are endless. Simply because the fraud you are aware of is not listed does not mean you won’t get a reward. You can [ask Mr. Hesch](#ask) and his law firm to consider in confidence your allegations, as outline in the prior chapter.

**Bullet list of examples of Homeland Security fraud**

Below is a bullet listing of ways hospitals, doctors, and other healthcare providers cheat under Homeland Security and other government programs. These are just samples, but there are many other ways companies cheat Homeland Security.

* charging for tests, services or supplies not actually provided
* stating falsely how many hours were spent (e.g., routinely adding 30 minutes)
* charging for tests or services not really needed
* lying about any work or service performed
* billing for unallowable or unreasonable costs of goods or services
* overstating how much it cost to obtain an item
* receiving or paying kickbacks for client referrals or to use particular products.

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**Reporting fraud against other government programs**

The DOJ whistleblower reward program is not limited to Homeland Security fraud, but applies to reporting fraud against any government contract or program, including Medicare, the military, or any of the more than 20 government agencies.

The Hesch Firm, LLC exclusively represents whistleblowers file for rewards under the DOJ reward program, the IRS reward program, and the SEC reward program. If you know if fraud against any government program or contract, you may be eligible for a whistleblower reward. Visit the website of Mr. Hesch, [www.HowToReportFraud.com](http://www.HowToReportFraud.com) or send him an email describing the fraud and the information spelled out in the chapter [**How to ask Mr. Hesch to file your whistleblower reward application.**](#ask)

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**About Joel D. Hesch, Esq.**

After spending more than 15 years as a Trial Attorney in the DOJ whistleblower reward program office in Washington, D.C. – and helping recover $1.5 billion in the process – Joel Hesch realized he could serve as a powerful advocate and ally for whistleblowers looking for justice and putting an end to fraud against the government.

Armed with the knowledge and experience he gained while working for the Department of Justice, Mr. Hesch founded The Hesch Firm, LLC in 2006. Since then, The Hesch Firm has been a staunch nationwide advocate for whistleblowers in their fight against all kinds of fraud and helping whistleblower file for rewards.

Mr. Hesch graduated in the top of his law school class from The Catholic University of America. Today, his passion for education continues as he teaches and mentors law students. Mr. Hesch is a member of the American Bar Association, the State Bar of Washington, D.C., and the State Bar of Maryland. He has been admitted to the Supreme Court of the United States, United States Court of Federal Claims, United States Tax Court and the D.C. and Maryland District Courts. Joel and his firm now represent whistleblowers throughout the country.

Joel has been lauded time and time again for his efforts to combat fraud. Early in his career, he was selected to join an elite team of Department of Justice attorneys to pursue the then-largest whistleblower case in history, and ultimately helped recover $641 million from a hospital chain. For his contributions to the case, Mr. Hesch received a Special Commendation Award for outstanding service. Joel also received several other awards while at DOJ.

The total of Mr. Hesch’s whistleblower fraud cases under the DOJ reward program amounts to over $1.7 billion in False Claims Act (FCA) judgments or settlements and paid out over $265 million in whistleblower rewards.

To ask Mr. Hesch to represent you, see the chapter [**How to ask Mr. Hesch to file your whistleblower reward application.**](#ask)

**Disclaimer**

This e-book is for information only. It should not be viewed as containing legal advice. Each case is unique and needs to be evaluated by an experienced attorney. While we treat information you send to us confidentially and use it to determine if we will be willing and able to become your attorney, when you provide us with information we do not become your attorney. Until we both sign a written agreement, we do not represent you and have not agreed to do so. In addition, past results do not guarantee future results.

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1. <https://www.dhs.gov/sites/default/files/publications/DHS%20FY18%20BIB%20Final.pdf> [↑](#footnote-ref-1)
2. <https://www.dhs.gov/how-do-i/report-fraud-waste-or-abuse-within-dhs> [↑](#footnote-ref-2)