

Update on CFTC Whistleblower Program and Recent Award

By [Alia Al-Khatib](#)
July 30, 2021

In April 2021, the Commodity Futures Trading Commission (“CFTC” or “the Commission”) [awarded](#) approximately \$3 million to a whistleblower whose tip ultimately led to a successful enforcement action. This award came after over six months during which the CFTC issued no whistleblower awards. Despite this relatively quiet period, the increase in whistleblower awards over the past few years shows the CFTC’s increased reliance on whistleblower tips. Including the recent \$3 million award, the CFTC has awarded approximately \$123 million to whistleblowers since 2014.

The [CFTC Whistleblower Program](#) was created by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Under the CFTC Whistleblower Program, the Commission is required to pay awards to eligible whistleblowers who voluntarily provide it with original information that leads to a successful enforcement action in which the CFTC recovers over \$1,000,000 in monetary sanctions. The whistleblower is eligible to receive an award of 10 to 30 percent of the amount collected. Whistleblower awards are paid from the CFTC Customer Protection Fund, so no money is taken from injured customers for the program. The Fund was established by Congress and financed entirely through monetary sanctions that violators of the Commodities Exchange Act (CEA) must pay to the CFTC.

By statute, monetary sanctions collected by the Commission that are not otherwise distributed to victims of CEA violations are transferred to the Fund. However, the Fund can be replenished only when it falls below \$100 million. As of October 2020, when the CFTC provided its most recent [annual report](#) to Congress, the Fund’s balance was approximately \$117 million. On May 11, 2021, the Wall Street Journal [reported](#) that the CFTC whistleblower program may face some challenges ahead because of a recommended award of \$100 million to a whistleblower who presented the CFTC with information about potential violations at Deutsche Bank. The whistleblower tip led to successful enforcement actions at the Justice Department as well as the CFTC, which resulted in an \$800 million [penalty](#) to the CFTC in 2015. According to the 2020 report to Congress, the Fund only records a liability for a pending whistleblower award after the whistleblower has been formally notified of an award and the related sanction, or at least part it, has been collected. Individuals knowledgeable about the program have expressed concern that the Fund cannot replenish itself quickly enough after such a large payout, given the Fund’s current balance. The Wall Street Journal article warned that the Commission’s whistleblower office staff could end up furloughed if the entire fund is depleted.

Such concerns about whether the CFTC will have the resources to continue to administer the whistleblower program have been alleviated, at least in the short term, by a recent bill S. 409, signed by President Biden on July 6, 2021. The bill allows the Fund to be expended for administrative expenses, and it provided for the transfer of \$10 million to the Fund to be used to cover administrative expenses of the program. With that money, the CFTC staff should be able to continue to work without interruption.

It remains to be seen what will happen with the expected whistleblower award of approximately \$100

million. The largest [award](#) issued to a single whistleblower by the CFTC in the program's history was approximately \$30 million, in July 2018. In the press release that accompanied the award announcement, the then Chairman of the CFTC stated that the Commission hoped that these large awards would incentivize whistleblowers to come forward and provide valuable information for CFTC enforcement actions. The CFTC also issued a string of awards from March to December 2019 during which it awarded a total of approximately \$16 million to multiple whistleblowers. It is certainly possible that a substantially large award and frequent awards to whistleblowers may encourage others to come forward.

Though the CFTC has not issued a whistleblower award since April of this year, it has issued eight Notices of Covered Action on its [website](#), notifying whistleblowers who previously submitted tips and may be eligible for payout of an award that they have 90 days to apply. The CFTC posts these Notices when it obtains a final judgment or settlement of more than \$1 million in monetary sanctions. Because the CFTC does not contact potential claimants directly about a successful enforcement action that could entitle them to an award, potential claimants should monitor the website for a Notice related to their submission. For additional guidance on how to submit a tip through the CFTC whistleblower program, go to the [CFTC Whistleblower Guide](#), or consult an attorney knowledgeable about whistleblower award programs.