

What is the Statute of Limitations for SEC Whistleblower Reward Cases?

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Statute of Limitations for SEC Whistleblower Reward Cases

The statute of limitations impacting SEC whistleblower reward cases is, with few exceptions, five years from the date of the violation. See [28 U.S.C. § 2462](#). The five-year clock begins to tick when the violation occurs, not when it is discovered. See [Gabelli v. SEC](#). This limitations period applies to the SEC's claims for civil monetary penalties, but not to equitable relief. As SEC whistleblower rewards are based on the total monetary sanctions *collected* in enforcement actions, the five-year limitations period is capable of reducing or even eliminating a whistleblower's potential award. As such, whistleblowers should act quickly to submit tips to the SEC to avoid potentially diminishing the value of the claim.

If the SEC believes that any of the wrongdoing may be outside the limitations period before the SEC would be able to file or institute an enforcement action, the SEC may ask the potential defendant to enter into a "tolling agreement" to suspend the statute of limitations for a specified period of time. Without a tolling agreement, the five-year clock will continue to run, which may significantly limit the SEC's ability to bring a successful enforcement action in which the SEC obtains monetary sanctions totaling more than \$1 million – the threshold necessary for the whistleblower to be eligible for a reward under the rules of the SEC Whistleblower Program.

SEC Whistleblower Program

The SEC Whistleblower Program, established in 2011 under the Dodd-Frank Act, provides whistleblowers with a strong monetary incentive to report wrongdoing to the SEC. Under the program, the SEC is required to pay awards to eligible whistleblowers who provide original information that leads to enforcement actions with total monetary sanctions in excess of \$1 million. In exchange for the information, the SEC will pay an award to whistleblowers of between 10% and 30% of the total monetary sanctions (*e.g.*, civil penalties, disgorgement, interest) collected in the enforcement action. The largest SEC whistleblower awards to date are [\\$50 million](#), [\\$39 million](#), and [\\$37 million](#).

The SEC Whistleblower Program allows whistleblowers to submit anonymous tips to the SEC if represented by an attorney. Whistleblowers are also afforded substantial protection against retaliation. For more information about the SEC Whistleblower Program, see the eBook: [Tips from SEC Whistleblower Attorneys to Maximize an SEC Whistleblower Award](#).

Statute of Limitations Impact on Monetary Sanctions in SEC Enforcement

The statute of limitations controls the total [monetary sanctions](#) available for the SEC to order in enforcement actions. In most cases, financial remedies will include civil monetary penalties, disgorgement, or both.

Civil Monetary Penalties

The SEC may impose [civil monetary penalties](#) against wrongdoers for violating the federal securities laws. Civil penalties range in amount based on a variety of factors and are subject to a five-year statute of limitations under 28 U.S.C. § 2462:

“...an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued...”

Since 2010, the SEC has frequently imposed more than \$1 billion annually in civil monetary penalties against wrongdoers. In 2018 alone, the SEC imposed penalties of more than [\\$1.4 billion](#). While these penalties account for a significant amount of the SEC’s annual total monetary relief, disgorgement has by far been the SEC’s most powerful tool to collect monetary sanctions from wrongdoers.

Disgorgement

In addition to paying civil penalties, the SEC may require wrongdoers to [disgorge](#) (give up) the ill-gotten gains resulting from the illegal conduct. Since 2012, wrongdoers in SEC’s actions and proceedings have been ordered to pay at least \$2 billion annually in disgorgement.

Before 2017, the SEC’s claims for disgorgement were not subject to any statute of limitations. Thus, fraudsters could not keep illegal profits just because they were able to operate their schemes for longer than five years. On June 5, 2017, the Supreme Court held in [Kokesh v. SEC](#) that disgorgement operates as a penalty, and thus subject to the five-year statute of limitations. As a result of the decision, [Kokesh was able to keep all but \\$5 million](#) of the \$35 million he embezzled from his investors.

Since *Kokesh*, the SEC’s power to collect large disgorgement awards from long-running misconduct has significantly decreased. In 2018, the SEC Enforcement Division noted that the Supreme Court’s decision had already caused the SEC to forgo about [\\$800 million](#) in potential disgorgement awards alone. For this reason, as well as others detailed in the article [5 Tips for SEC Whistleblowers and Lessons Learned from SEC Whistleblower Awards](#), most whistleblowers should not delay in reporting to the SEC.

SEC Whistleblower Rewards

Since 2011, the SEC Whistleblower Program has received more than 28,000 whistleblower tips, some of which have enabled the SEC to recover more than \$2 billion in monetary sanctions from wrongdoers. The SEC has paid more than [\\$385 million](#) in awards to whistleblowers to date. The table below identifies some of the largest awards that the SEC has issued to whistleblowers:

Whistleblower Award	Date	Basis for Whistleblower Award
\$50 and \$33 million	March 19, 2018	<p>On March 19, 2018, the SEC announced its largest-ever whistleblower awards, with two whistleblowers sharing a nearly \$50 million award and a third whistleblower receiving more than \$33 million.</p> <p>See the SEC's order determining the whistleblowers' award claims here.</p>
\$39 and \$15 million	September 6, 2018	<p>On September 6, 2018, the SEC announced its second-largest SEC whistleblower award to date of \$39 million. According to the SEC's Press Release, the whistleblowers provided critical information and continued assistance that helped the SEC bring an important enforcement action.</p>
\$37 and \$13 million	March 26, 2019	<p>On March 26, 2019, the SEC announced its third-highest SEC whistleblower award to date of \$37 million. Another whistleblower received a \$13 million award in the same action, totaling \$50 million in awards to the two whistleblowers.</p>
\$30 million	September 22, 2014	<p>A foreign whistleblower came to the SEC with “information about an ongoing fraud that would have been very difficult to detect.”</p> <p>This award underscores that non-US citizens are eligible whistleblowers in the SEC Whistleblower Program.</p>
\$22 million	August 30, 2016	<p>A former financial executive at Monsanto exposed weaknesses in the company's internal controls that failed to account for</p>

Whistleblower Award	Date	Basis for Whistleblower Award
\$20 million	November 14, 2016	<p>millions of dollars in rebates. Monsanto agreed to settle the allegations of accounting fraud for \$80 million.</p> <p>Importantly, external auditors, internal auditors, accountants and other compliance personnel may be eligible for awards under the SEC Whistleblower Program. Indeed, they are often best positioned to discover wrongdoing.</p> <p>According to the SEC's order determining the whistleblower awards, three whistleblowers applied for awards related to the enforcement action. The SEC denied two of the whistleblowers' applications because they did not provide "original information," and issued the full \$20 million award to one whistleblower.</p> <p>A company insider "substantially advanced the agency's investigation and ultimate enforcement action."</p>
\$17 million	June 9, 2016	<p>This award highlights that whistleblowers may receive an award if they provide original information regarding an open SEC investigation if it significantly contributes to the success of the action.</p>
\$16 million	November 30, 2017	<p>Two whistleblowers received awards of more than \$8 million each for providing the SEC with critical information that led to a successful enforcement action.</p> <p>This award demonstrates how whistleblowers can receive an increased award percentage for providing ongoing, extensive, and timely assistance to the SEC. As detailed in the SEC's order, the second whistleblower received the same \$8 million</p>

Whistleblower Award	Date	Basis for Whistleblower Award
\$14 million	September 30, 2013	<p>award as the first whistleblower by providing additional significant information and ongoing assistance to the SEC that "enabled the Enforcement staff to more fully and quickly understand the misconduct and to assess the legal consequences... [which] saved a substantial amount of time and resources in the Investigation."</p> <p>The whistleblower exposed a fraudulent offering that targeted foreign investors who sought to gain a legal pathway to citizenship through the EB-5 Immigrant Investor Program.</p>
\$7 million	January 23, 2017	<p>Recently, there has been rise in EB-5 investment fraud. Click here to read more about how to report EB-5 fraud and earn an award.</p> <p>Three whistleblowers split an award of more than \$7 million after helping the SEC prosecute an investment scheme.</p>
\$5.5 million	January 6, 2017	<p>One whistleblower provided information that was the primary reason that the SEC opened an investigation. That whistleblower received a more than \$4 million award. Two other whistleblowers jointly provided new information during the SEC's investigation that significantly contributed to the success of the SEC's enforcement action. Those two whistleblowers will split more than \$3 million.</p> <p>An anonymous whistleblower orally provided the SEC with critical information about ongoing securities fraud. Generally, the SEC requires that whistleblower provide information "in writing." However, the SEC waived that requirement in this case due to</p>

Whistleblower Award	Date	Basis for Whistleblower Award
\$5 million	May 17, 2016	<p>“highly unusual circumstances” and awarded the whistleblower more than \$5.5 million for the information.</p> <p>This award marks the third time that the SEC has deemed it appropriate to waive a procedural requirement. The most recent exception occurred on July 27, 2017, when the SEC issued a \$1.7 million whistleblower award to an insider who failed to comply with all of the whistleblower program's rules and had some culpability in the fraud. The former chief of the SEC whistleblower office said that these awards underscore the SEC’s discretionary authority to do what justice requires. A former company insider’s detailed tip led the agency to uncover securities violations that would have been nearly impossible for it to detect but for the whistleblower’s information. The SEC's press release noted that employees are often best positioned to witness wrongdoing.</p>
\$4 million	April 25, 2017	<p>The SEC issued the \$4 million award to an anonymous whistleblower who provided information that led another governmental authority (not the SEC) to a successful enforcement action resulting in significant monetary sanctions.</p>
\$4 million	September 30, 2016	<p>This award highlights that SEC whistleblowers are still eligible for an award when they provide information to the SEC that leads other governmental authorities to successful enforcement actions resulting in monetary proceeds in excess of \$1 million. The SEC issued the award to an</p>

Whistleblower Award	Date	Basis for Whistleblower Award
\$3.5 million	May 13, 2016	<p>anonymous whistleblower for “alter[ing] the agency to a fraud.”</p> <p>The lack of publicly available information about the anonymous whistleblower and the enforcement action underscores how serious the SEC is about protecting whistleblower's. Under the program, whistleblower may report anonymously through an SEC whistleblower attorney. The whistleblower “bolstered an ongoing investigation with additional evidence of wrongdoing” which helped the SEC during settlement discussions with the company.</p>
\$3.5 million	December 5, 2016	<p>This award underscores how whistleblowers may still receive an award even if the SEC already has an open investigation into a matter.</p> <p>A whistleblower received an award of \$3.5 million for providing original information to the SEC that led to a successful enforcement action. The press release states: "Whistleblowers do a tremendous service to the investing public and we will continue to reward those who come forward with valuable tips that help us bring successful cases against those who violate the securities laws."</p>

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