

## **Despite Record Year, SEC Must Improve Whistleblower Program to Align with White House Anti-Corruption Initiative**

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SEC Chair Gary Gensler announced on October 25th that in the 2023 fiscal year, the Commission received a record number of 18,000 whistleblower tips.

The SEC Whistleblower Program has grown rapidly and effectively since its inception in 2010 – the 2022 Fiscal Year set a record of 12,300 whistleblower tips. This was a near doubling of the 2020 tips, which set a record of 6,911.

The SEC transnational whistleblower program responds to individuals who voluntarily report original information about potential misconduct. If tips lead to a successful enforcement action, the whistleblowers are entitled to 10-30% of the recovered funds. The programs have created clear anti-retaliation protections and strong financial incentives for reporting securities and commodities fraud.

The U.S. Strategy on Countering Corruption is a White House initiative from December of 2021 that establishes the fight against corruption as a core tenant of national security interests. It outlines strategic pillars and objectives within each. The recommendations on improving the

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SEC's whistleblower provisions as outlined below have the same goal of creating stronger processes to combat corruption.

Since the SEC Whistleblower Program was created in 2010, whistleblowers have played a crucial role in the SEC's enforcement efforts. Overall, since the whistleblower program was established in 2010, "[e]nforcement actions brought using information from meritorious whistleblowers have resulted in orders for more than \$6.3 billion in total monetary sanctions, including more than \$4.0 billion in disgorgement of ill-gotten gains and interest, of which more than \$1.5 billion has been, or is scheduled to be, returned to harmed investors," according to the [2022 annual report](#).

This \$6.3 billion recovered via sanctions is money that is put back into the pockets of investors and everyday Americans.

The SEC does not credit related enforcement actions to award notifications and sanctions in order to maintain the anonymity and confidentiality of whistleblowers, award notifications don't tie to underlying enforcement action. The \$6.3 billion does not include DOJ enforcement actions, which combined would show a much larger number.

Non-U.S. citizens who blow the whistle on potential securities frauds committed by publicly traded companies outside the United States are eligible to receive awards, as well as those whistleblowers who report violations of the [Foreign Corrupt Practices Act](#). This anti-corruption legislation prohibits the payment of anything of value to foreign government officials in order to obtain a business advantage.

Whistleblowers from over 130 countries have used the SEC Whistleblower Program to report fraud in their workplace.

Despite the massive growth of tips received, many whistleblowers'

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cases are dismissed by the SEC due to insubstantial filing errors and strict time parameters on forms, or reported to the news media, other U.S. government agencies, or international government workers in roles that are public abroad but private in the U.S.

Considering these narrow qualifications and to ensure that the process for qualifying as a whistleblower aligns with U.S. anti-corruption priorities, the [National Whistleblower Center](#) recommends that the program be improved by expanding the definition of voluntary, further the provisions of identity protection and rewards. These recommendations align with the White House drafted United States Strategy on Countering Corruption.

Whistleblowers identified in case investigations should be automatically eligible for rewards, rather than mandated to meet technical form requirements.

The SEC should maintain their “Three Conditions” qualifications standards and expand the definition of “voluntary.” The current language disqualifies whistleblowers who report fraud to the media, other government agencies, foreign law enforcement, or a U.S. embassy before the SEC, considering them “involuntary.” These restrictions dissuade potential whistleblowers from engaging with the program and thus interfere with federal anti-corruption objectives. The agency must ensure that whistleblowers who file complaints internally before coming to the SEC maintain award eligibility.

The SEC should not incentivize or require whistleblowers to report internally before filing claims with the agency, as this exposes them to retaliation. If a whistleblower was removed from their position, they could no longer provide the Commission with the most updated information, which would harm the investigation.

By establishing a consistent inter-agency protocol concerning whistleblowers who have participated in the crime they report, the SEC

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can further protect the confidentiality and anonymity of whistleblowers in all ongoing federal investigations surrounding their disclosures.

Whistleblowers must receive the full force of related action provisions and rewards if the company or agency they report is simultaneously being investigated by another branch of government.

SEC regulations should contain strict deadlines for paying awards. These regulations should be premised on the fact that the SEC and Justice Department investigators and prosecutors will know the identity and contributions of all whistleblowers who would qualify for a reward in a particular case.

In the IRS (Internal Revenue Service) Whistleblower Program, procedures require that their investigators file whether or not there was a whistleblower involved in the case at the time the case file is closed. Agents thus know who the whistleblowers are, and the agency can process a claim quickly. The integration of affidavits and statements from front-line investigators into the decision-making process accelerates the reward payout.

Wait times for awards received are another disincentivizing factor for blowing the whistle. The SEC should establish and abide by a strict deadline for paying awards to ensure that whistleblowers are compensated fully and promptly. Rewards should not have a cap limit.

Such changes reinforce the White House Strategy's objective to “bolster the ability of civil society, media, and private sector actors to safely detect and expose corruption,” “curb illicit finance,” and “enhance enforcement efforts” in the name of “modernizing, coordinating, and resourcing U.S. Government efforts to fight corruption.”

Enhancing the program ensures that whistleblowers whose information successfully leads to enforcement action on money laundering crimes

are rewarded, no matter how they provide the information.

Such provisions will demonstrate to international whistleblowers that the risk of blowing the whistle on fraud is worth taking and the United States will support them through the process.

*This article was authored by Sophie Luskin.*

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