

Introduction

Corporate crime is rampant and increasing. That's because it isn't caught very often and, even when detected, is not punished very severely. There are lots of reasons for that, but one very big one is that it's often incredibly difficult to uncover corporate crime.....unless someone on the inside blows the whistle.

That doesn't happen very often because whistleblowers are almost always attacked by the corporate lawbreakers they are blowing the whistle on, often under the guise of proclaiming their innocence. Whistleblowers get fired and then blackballed in their industry; have their reputations smeared, their careers destroyed, and their credit history ruined; and often lose their homes and sometimes their families. That's a lot to ask someone to do to try to stop corporate crime.

That's why the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 included a program to incentivize and protect whistleblowers: it not only created significant financial incentives for whistleblowers to come forward, but it also had strict requirements to protect whistleblowers' identity to minimize the devastating downsides of doing the right thing.¹ The act mandated that the Securities and Exchange Commission (SEC) implement the program.²

By any measure, the SEC's whistleblower program has been an unbelievable success: it has cost taxpayers nothing, while catching hundreds of lawbreakers who would never have been caught. That's because whistleblowers are only rewarded if they provide original information that is not otherwise available to regulators, and it results in a successful prosecution.

As a direct result of the program, the SEC has been able to file hundreds of new enforcement actions; halt countless ongoing securities law violations; hold innumerable securities law violators accountable; prevent massive harm to investors; and put billions of dollars back in the hands of defrauded investors.

Here are the highlights of a few of the program's key achievements and milestones:

- More than \$6.3 billion in total monetary sanctions against wrongdoers from enforcement actions brought using information from whistleblowers from the start of the program in 2011 through the end of fiscal year 2022.
- More than \$4 billion of that \$6.3 billion in total monetary sanctions was included in orders to disgorge ill-gotten gains (plus prejudgment interest), which prevent wrongdoers from profiting by requiring that they surrender the proceeds of their illegal activities.
- More than \$1.5 billion of that \$4 billion in disgorgement (plus prejudgment interest) has been, or is scheduled to be, returned to harmed investors.

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 922, 124 Stat. 1376, 1842 (July 21, 2010), <https://www.congress.gov/111/plaws/publ203/PLAW-111publ203.pdf>.

² The law was strict and mandatory because the SEC had failed for many years to listen to whistleblowers, including those with credible evidence as was the case with a whistleblower who repeatedly tried to get the SEC to properly investigate Bernie Madoff's multi-billion-dollar Ponzi scheme. The SEC didn't listen, and Madoff caused untold devastation by the time he confessed in December of 2008. The SEC could have and should have prevented a very significant amount of the losses in the Madoff case.

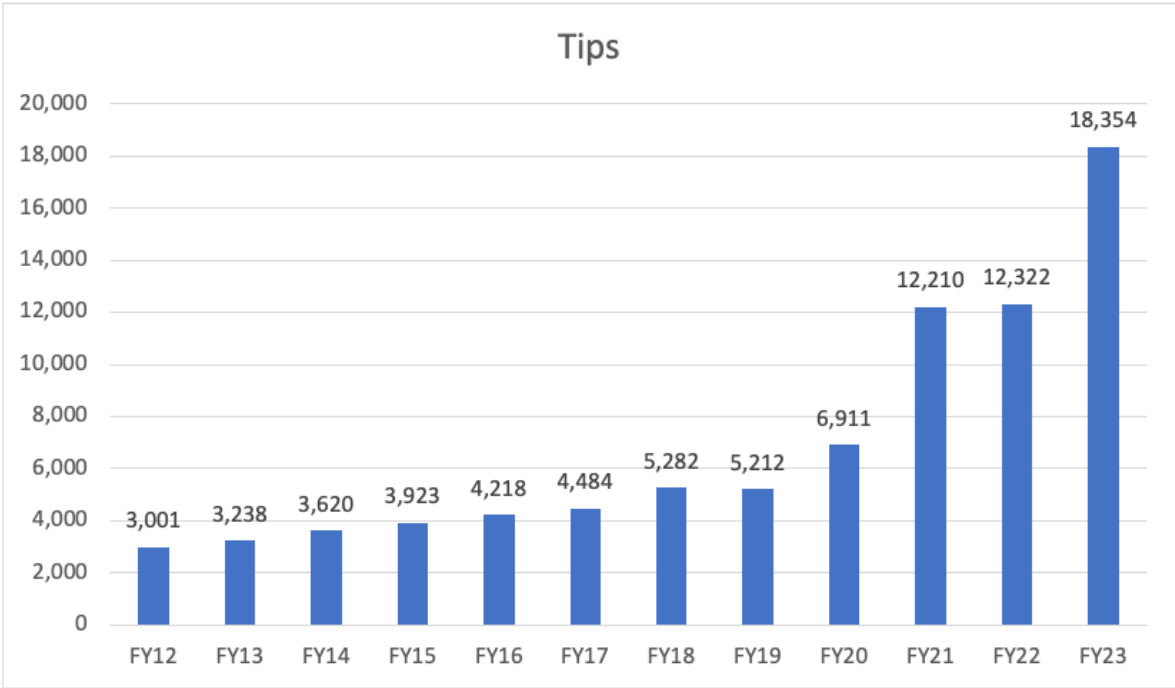


Amazingly, these billions in recoveries did not cost the taxpayers one dime. As noted above, whistleblowers only get paid if there is a successful prosecution and, even then, they are only paid from the funds recovered from the lawbreaker. As of the end of fiscal year 2022, the SEC had paid more than \$1.3 billion in whistleblower awards.³ This means that, for every \$1 paid to whistleblowers, the SEC obtained \$4.84 in monetary sanctions. It also means that, for every \$1 paid to whistleblowers, the SEC was awarded \$3.07 in disgorgement and returned \$1.15 to harmed investors.⁴ That is an amazing record of success.

This report highlights the program’s recent record-setting performance in terms of tips received and awards issued. We also discuss recent positive rule changes to the SEC’s whistleblower program and recent SEC enforcement priorities concerning whistleblowers. Finally, we discuss the need for other agencies to have a whistleblower program similar to the SEC’s.⁵

The Whistleblower Program’s Recent Results: Setting Records

The SEC has been able to achieve its outstanding results by continuing to increase the number of tips it receives each year and by steadily increasing the awards it issues to whistleblowers whose tips lead to successful enforcement actions. In terms of tips received, from the program’s inception through the end of fiscal year 2023, the SEC has received 82,775 tips; of that amount, 50% of these tips were received in the last three fiscal years. Indeed, the last three fiscal years represent the three years in which the SEC has received the highest number of tips. The SEC received a record number of tips last fiscal year:

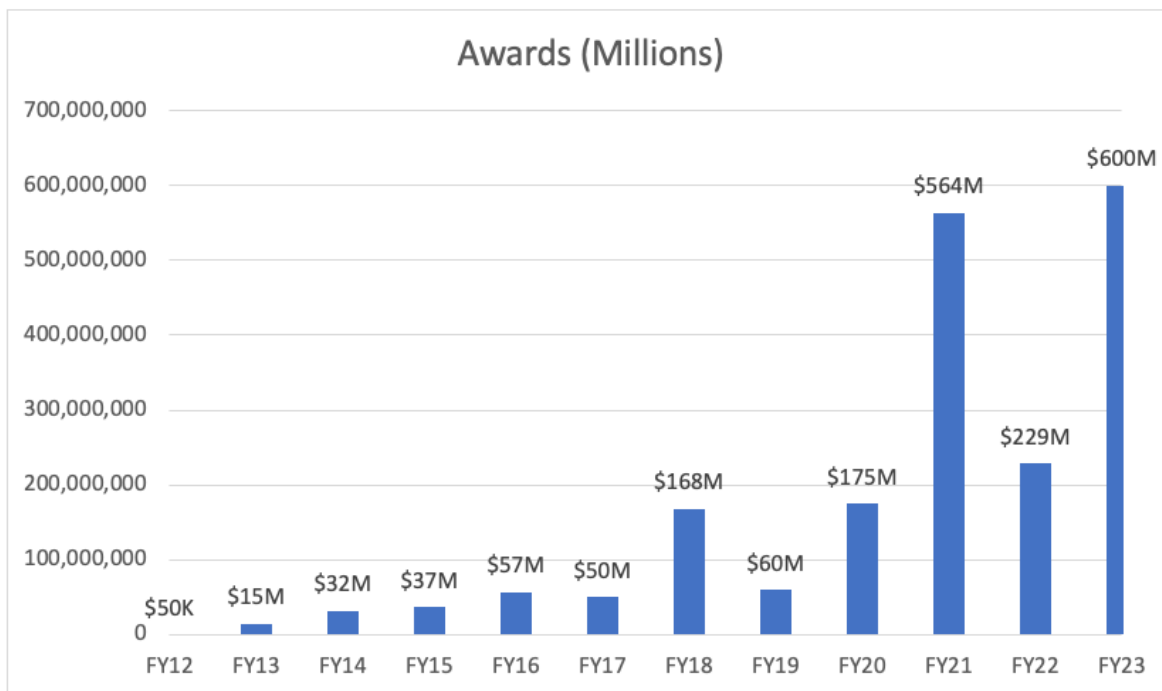


³ SEC Whistleblower Office Announces Results for FY 2022 (Nov. 15, 2022), https://www.sec.gov/files/2022_ow_ar.pdf.

⁴ Although the Office of the Whistleblower recently announced its results for fiscal year 2023, it did not announce the amount of monetary sanctions, including the amounts of disgorgement and funds returned to harmed investors, obtained in enforcement actions using information from meritorious whistleblowers in fiscal year 2023. See Securities and Exchange Commission Office of the Whistleblower, Annual Report to Congress for Fiscal Year 2023 (Nov. 14, 2023), <https://www.sec.gov/files/fy23-annual-report.pdf>.

⁵ This report updates two prior reports on the SEC’s whistleblower program in [2020](#) and [2022](#). Those interested in the origins, mechanics, and benefits of the program can refer to our 2022 report.

In addition to the highest number of tips, the last three fiscal years have also seen the SEC issue the three highest total amounts of awards. Again, last year set the record:



In addition to the SEC issuing a record amount of total awards, the SEC also paid out its highest ever single award in fiscal year 2023. On May 5, 2023, the SEC paid almost \$279 million to a whistleblower whose information and assistance led to the successful enforcement of SEC and related actions.⁶ The SEC’s Director of Enforcement stated that the size of the award “not only incentivizes whistleblowers to come forward with accurate information about potential securities law violations, but also reflects the tremendous success of our whistleblower program.”⁷ Although the SEC did not provide further details when it issued the award, subsequent reporting revealed that the award stemmed from a bribery case against telecommunications company Ericsson.⁸ That case led to a \$1.1 billion settlement.⁹

The SEC also issued its fourth largest award in the history of its whistleblower program last year. On August 4, 2023, the SEC awarded over \$104 million to seven individuals whose information and assistance led to a successful SEC enforcement action.¹⁰

Indeed, the last three fiscal years have seen the SEC issue its four highest awards: the \$279 million award and \$104 million award issued in fiscal year 2023, a \$114 million award in fiscal year 2021, and another \$114 million award in fiscal year 2021. Prior to fiscal year 2021, the largest award issued pursuant to the program was an \$83 million award issued in fiscal year 2018.¹¹

⁶ SEC Issues Largest-Ever Whistleblower Award (May 5, 2023), <https://www.sec.gov/news/press-release/2023-89>.

⁷ *Id.*

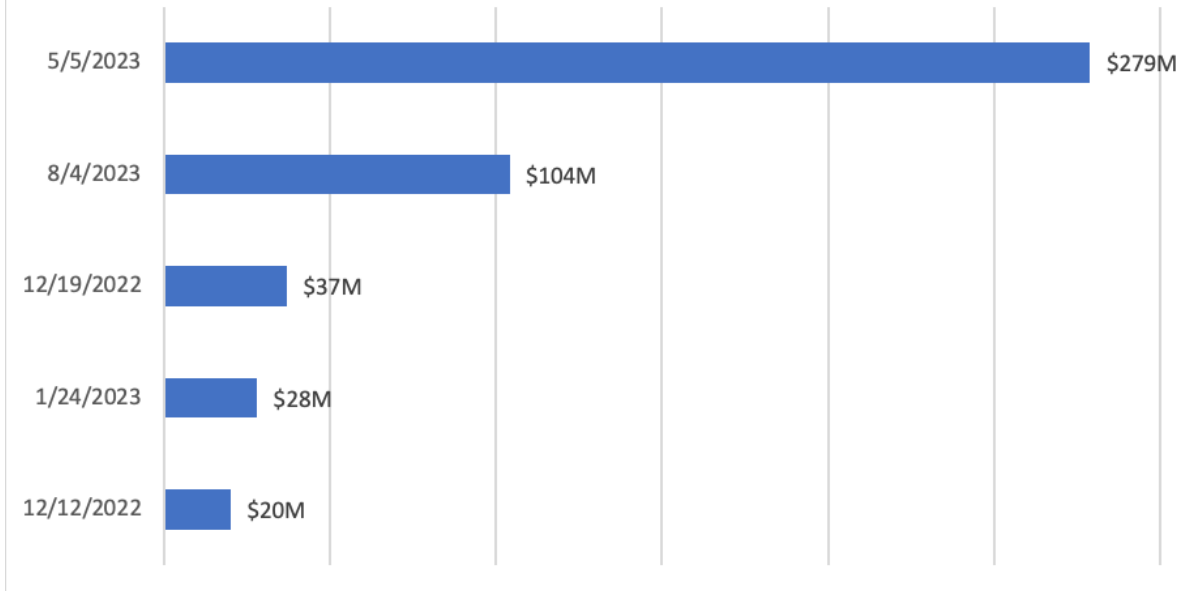
⁸ Mengqi Sun, *Record \$279 Million Whistleblower Award Went to a Tipster on Ericsson*, THE WALL STREET JOURNAL (May 26, 2023), <https://www.wsj.com/articles/record-279-million-whistleblower-award-went-to-a-tipster-on-ericsson-5af40b98>.

⁹ *Id.*

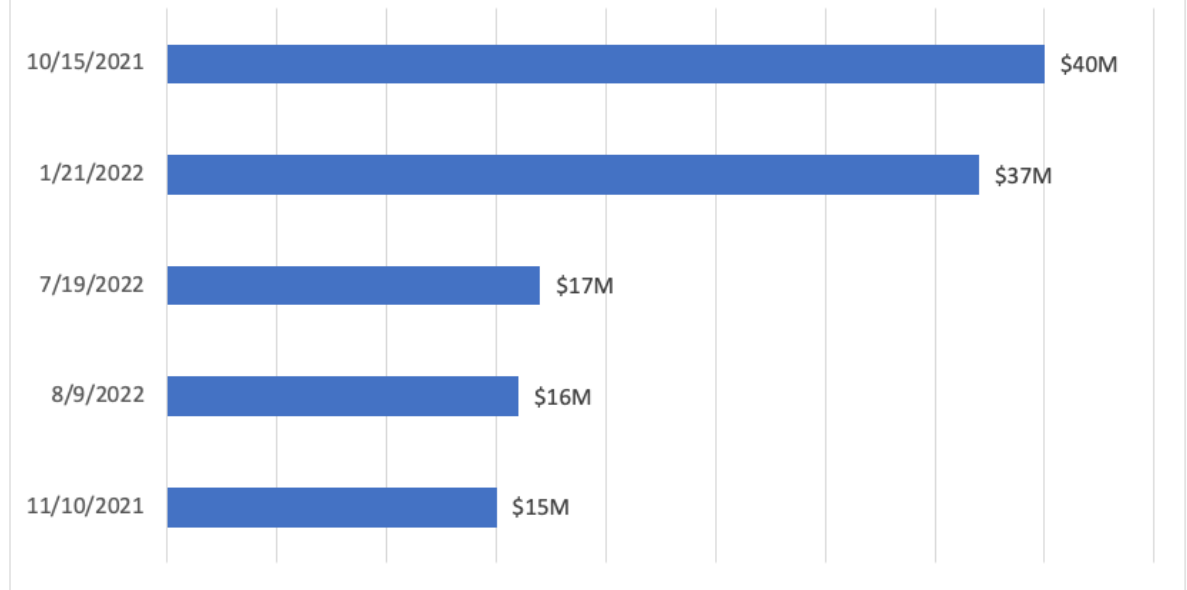
¹⁰ SEC Awards More than \$104 Million to Seven Whistleblowers (Aug. 4, 2023), <https://www.sec.gov/news/press-release/2023-147>.

¹¹ SEC, Whistleblower Program: 2021 Annual Report to Congress, at 10 (2021), https://www.sec.gov/files/2021_ow_ar_508.pdf.

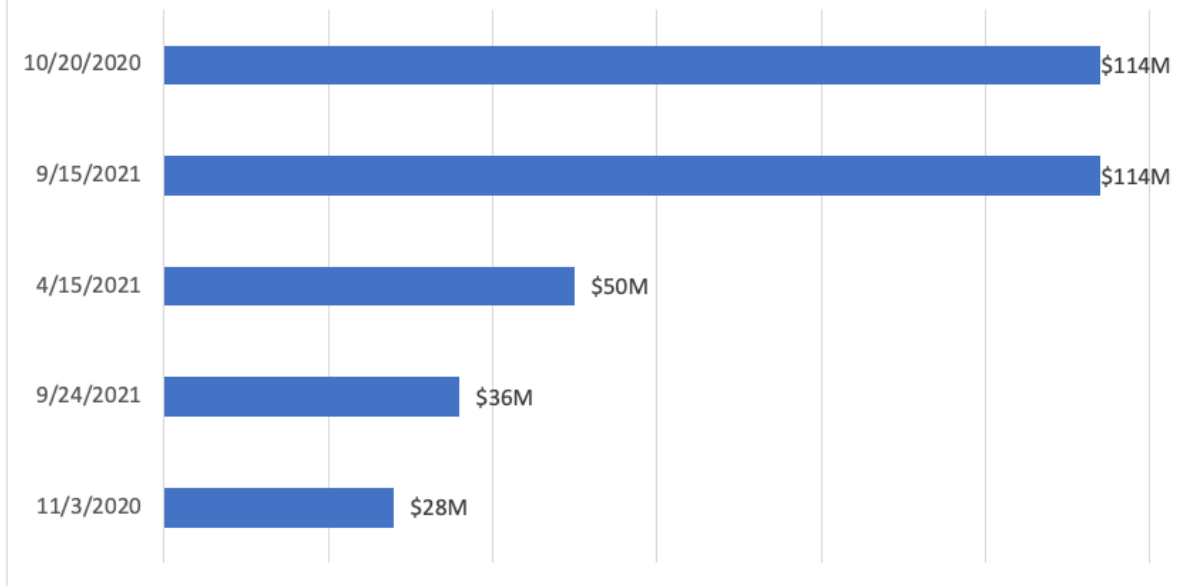
Top Five Largest Awards of FY 2023 (Millions)



Top Five Largest Awards of FY 2022 (Millions)



Top Five Largest Awards of FY 2021 (Millions)



These awards show that the SEC recognizes the importance of incentivizing whistleblowers to report suspected securities law violations to the Commission. Indeed, regulators “must recognize that information of the caliber and type that only an inside whistleblower can provide is costly— ‘[i]f the regulatory world is not willing to pay for such information, it will not get it.’”¹² The assurance that whistleblowers will be compensated for undertaking the risks that accompany whistleblowing “is a crucial factor in determining whether they will decide to come forward and share the type of information that would otherwise be so difficult to obtain.”¹³ The awards that the SEC has issued in recent years show “the seriousness with which the SEC views the whistleblower award as a tool to catch bad actors, and they signal to all potential whistleblowers that the SEC will make it worthwhile to come forward.”¹⁴ This willingness to incentivize whistleblowers is what has made its whistleblower program so “incredibly successful.”¹⁵ Since the inception of the program, the SEC has awarded more than \$1.9 billion to 397 whistleblowers as a result of original information that led to successful prosecutions in at least 283 actions.¹⁶

¹² Jennifer M. Pacella, *Making Whistleblowers Whole*, 12 U.C. IRVINE L. REV. 1291, 1300 (2022) (alteration in original) (quoting Pamela H. Bucy, *Information as a Commodity in the Regulatory World*, 39 HOUS. L. REV. 905, 948 (2002)).

¹³ Pacella, 12 U.C. IRVINE L. REV. at 1302.

¹⁴ Matthew L. Fornshell, Elizabeth E. Cary, and Daniel Culicover, *Protecting Your Company’s Assets as Whistleblowing Rises*, 42 No. 1 Litigation 52, 54 (2015).

¹⁵ Pacella, 12 U.C. IRVINE L. REV. at 1304.

¹⁶ Securities and Exchange Commission Office of the Whistleblower, Annual Report to Congress for Fiscal Year 2023, at 1 (Nov. 14, 2023), <https://www.sec.gov/files/fy23-annual-report.pdf>; SEC Whistleblower Office Announces Results for FY 2022, at 1 (Nov. 15, 2022), https://www.sec.gov/files/2022_ow_ar.pdf; SEC, Whistleblower Program: 2021 Annual Report to Congress, at 10 (2021), https://www.sec.gov/files/2021_ow_ar_508.pdf; SEC, Whistleblower Program: 2020 Annual Report to Congress, at 24 (2020), https://www.sec.gov/files/2020_owb_annual_report.pdf. All of the figures in the above charts come from the Office of the Whistleblower’s annual reports, at <https://www.sec.gov/reports>.

Recent Developments: Positive Changes to the SEC's Whistleblower Rules and Its Enforcement Priorities Regarding Whistleblowers

Recent Changes to the SEC's Whistleblower Rules

Despite the success of the SEC's whistleblower program since its inception in 2011, rule amendments adopted in 2020 threatened its future. That year, as part of amendments to the whistleblower rules, the SEC stated that it had discretion to reduce the amount of an award if it determined that the amount of the award reached after applying the relevant factors set forth in the whistleblower rules was too large.¹⁷ This discretion, which did not appear in the text of the whistleblower rules, could disincentivize whistleblowing by making potential whistleblowers fearful that the SEC would reduce the size of an otherwise meritorious award if it determined that doing so was necessary to prevent what it considered to be an overly large award.¹⁸

Similarly, the 2020 amendments provided that the SEC could decline to issue an award if it determined that the whistleblower could potentially receive an award from a whistleblower program at another agency and it determined that the other whistleblower program had “the more direct or relevant connection to the” action that would serve as a basis for an award from the SEC.¹⁹ Again, this discretion did not have a statutory or regulatory basis, as the Dodd-Frank Act provided that the SEC “shall” pay an award to a whistleblower whose information leads to a recovery by another agency.²⁰ The rule amendment meant that whistleblowers whose tips were forwarded to another agency might be subject to a whistleblower program less favorable to a whistleblower than the whistleblower program at the SEC.

Fortunately, the SEC mitigated the harmful effects of the 2020 amendments through additional amendments to the whistleblower rules that it adopted in 2022. In those amendments, the SEC clarified that it could use the authority granted it in the Dodd-Frank Act to consider the dollar amount of an award to increase the amount of an award after considering the amount reached through an application of the relevant factors, but it would not use the authority that it had to decrease the amount of an award.²¹ In other words, the SEC would use its authority to consider the dollar amount of a potential award when making an award determination only for the purpose of increasing, not decreasing, the award amount.²²

¹⁷ *Whistleblower Program Rules*, 85 Fed. Reg. 70898, 70,909-70,910 (Nov. 5, 2020); Amanda M. Rose, *Calculating SEC Whistleblower Awards: A Theoretical Approach*, 72 VAND L. REV. 2047, 2049 (2019) (noting that the rule revisions would “controversially” allow the SEC to consider whether a potential award would be extremely large in dollar terms warranting a downward departure).

¹⁸ See SEC Commissioner Allison Herron Lee, Statement: *June Bug vs. Hurricane: Whistleblowers Fight Tremendous Odds and Deserve Better* (Sept. 23, 2020) (quoting Comment Letter of Kohn, Kohn & Colapinto LLP (Sept. 20, 2020) (“A rule that permits arbitrary reductions based on the size of an award is counter to the public interest, would discourage whistleblowers from coming forward, and undermine existing incentives for desired behaviors when a whistleblower reveals a large fraud”), <https://www.sec.gov/news/public-statement/lee-whistleblower-2020-09-23>, at n.11; see also Rose, 72 VAND L. REV. at 2049 (noting that other officials expressed concern “that affording the SEC discretion to adjust downward large dollar awards may jeopardize the goals of the whistleblower program”); Better Markets, Comment Letter on Whistleblower Program Rules (Sept. 18, 2018) (“Congress did not authorize the Commission to apply any dollar amount threshold as a consideration for an award and did not intend for the Commission to reduce the incentive for whistleblowers to report fraud.”), <https://bettermarkets.org/sites/default/files/Better%20Markets%20CL%20to%20SEC%20on%20Whistleblower%20Program%2009-18-18.pdf>, at 3.

¹⁹ *Whistleblower Program Rules*, 85 Fed. Reg. at 70,943.

²⁰ Pub. L. No. 111-203, § 922, 124 Stat. 1376, 1842.

²¹ *Whistleblower Program Rules*, 87 Fed. Reg. 54,140, 54,140 (Sept. 2, 2022).

²² *Id.*

The 2022 amendments also clarified the circumstances under which the SEC would issue an award based on an action at another agency. Despite the 2020 amendment’s provision that the SEC would not issue such an award if the other agency’s whistleblower program had “the more direct or relevant connection to the” action that would serve as a basis for the award, the SEC provided in 2022 that it would nonetheless issue an award based on that action if: (1) the non-SEC award program has an award range or fixed-dollar award cap that could yield an award that is meaningfully lower than what could be awarded under the SEC’s whistleblower program; (2) the decision to grant an award under the non-SEC program is discretionary, even when any specified award criteria and eligibility requirements have been satisfied; or (3) the maximum award the SEC could potentially pay on the non-SEC action is capped at \$5 million.²³

These amendments ensure that whistleblowers are properly incentivized to report to the SEC.²⁴ The revisions that clarify the SEC will consider the dollar amount of a potential award for the limited purpose of increasing the award amount, but will not consider the dollar amount of a potential award to decrease the award amount, will “encourag[e] high-quality tips from insiders and others who have original information relating to potential securities law violations.”²⁵ The revisions that clarify when the SEC will issue an award based on an action brought by a different agency “provide additional incentives to encourage individuals to report potential violations of the federal securities laws when another program has a statutory cap, significantly lower award range, or discretionary award structure.”²⁶ Overall, the 2022 amendments “could increase the size of some whistleblower awards and therefore increase incentives for whistleblowers to submit tips.”²⁷ As a result, they are likely to “increase Commission enforcement activity and deter wrongdoing.”²⁸

Recent SEC Enforcement Priorities Regarding Whistleblowers

In addition to using its rulemaking authority to bolster its whistleblower program, the SEC has also recently used its enforcement authority to do so. The SEC’s whistleblower rules provide that no person “may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement . . . with respect to such communications.”²⁹ The SEC enforces this provision by sanctioning firms who fail to comply, and the SEC has recently stepped up its efforts to enforce this prohibition against impeding whistleblowing.

Between the program’s inception in 2011 and 2021, the SEC brought nine administrative proceedings against respondents for violating the prohibition against impeding whistleblowing.³⁰ Most of these

²³ *Id.*

²⁴ Although the 2022 amendments corrected the worst provisions of the 2020 rule changes, they did not address the interpretive guidance the SEC issued along with the 2020 amendments. That guidance narrowed the circumstances under which a whistleblower would be deemed to have provided “original information” to the SEC. The SEC should revisit this guidance in the future.

²⁵ 87 Fed. Reg. at 54, 146.

²⁶ *Id.* at 54, 143.

²⁷ *Id.* at 54, 147.

²⁸ *Id.* at 54, 148.

²⁹ 17 C.F.R. § 240.21F-17.

³⁰ *Homestreet, Inc.*, Exchange Act Release No. 79844, 2017 WL 218847 (Jan. 19, 2017); *Blackrock, Inc.*, Exchange Act Release No. 79804, 2017 WL 164091 (Jan. 17, 2017); *Sandridge Energy, Inc.*, Exchange Act Release No. 79607, 2016 WL 7368270 (Dec. 20, 2016); *Neustar, Inc.*, Exchange Act Release No. 79593, 2016 WL 7335658 (Dec. 19, 2016); *Anheuser-Busch Inbev SA/NV*, Exchange Act Release No. 78957, 2016 WL 5404890 (Sept. 28, 2016); *Health Net Inc.*, Exchange Act Release No. 78590, 2016 WL 4474755 (Aug. 16, 2016); *BlueLinx Holdings, Inc.*, Exchange Act Release No. 78528, 2016 WL 4363864 (Aug. 10, 2016); *Merrill Lynch, Pierce, Fenner*

proceedings involved companies that required employees to sign agreements prohibiting the employees from disclosing information without the consent of the company or from receiving compensation for reporting misconduct involving the company. These provisions undermined the purpose of the whistleblower program and the provision against impeding whistleblowing, which was to “encourage individuals to report to the Commission.”³¹

Since 2021, the SEC has brought eight such cases—almost the same number as in the previous ten years combined.³² It brought five cases in 2023 alone.³³ Again, most cases involved companies that required employees to sign agreements that prevented them from disclosing information to the SEC or from receiving compensation for doing so and therefore undermined the “critically important financial incentives that are intended to encourage persons to communicate directly with the Commission staff about possible securities law violations.”³⁴

In addition to bringing these cases with more frequency in recent years, the SEC has imposed higher penalties on companies found to have violated the prohibition against impeding whistleblowing. For example, earlier this year, the SEC imposed a \$35 million civil money penalty on Activision Blizzard, Inc., for lacking controls and procedures designed to ensure that information related to employee complaints of workplace misconduct would be communicated to Activision Blizzard’s disclosure personnel to allow for a timely assessment, and for entering into separation agreements that required former employees to notify the company if they received a request from a government agency in connection with a report or complaint.³⁵ Also this year, the SEC imposed a \$10 million civil money penalty on D.E. Shaw & Co., Inc., for requiring that employees sign agreements prohibiting them from disclosing confidential information to anyone without the firm’s consent, without an exception for voluntary communications with the SEC concerning possible securities law violations.³⁶ This was the highest penalty ever assessed for a standalone violation of the rule.³⁷

In addition to bringing these cases with more frequency in recent years, the SEC has imposed higher penalties on companies found to have violated the prohibition against impeding whistleblowing.

These recent enforcement actions show that preventing companies from impeding whistleblowing is a priority for the SEC. Indeed, the SEC’s Director of Enforcement recently stated in a speech that the SEC’s

³¹ *Smith, Inc.*, Exchange Act Release No. 78141, 2016 WL 4363431 (June 23, 2016); *KBR, Inc.*, Exchange Act Release No. 74619, 2015 WL 1456619 (Apr. 1, 2015). *E.g.*, *KBR, Inc.*, supra note 30, at *2 (citation omitted).

³² *E.g.*, *KBR, Inc.*, supra note 30, at *2 (citation omitted).

³³ *D.E. Shaw & Co. L.P.*, Exchange Act Release No. 98641, 2023 WL 6373163 (Sept. 29, 2023); *CBRE, Inc.*, Exchange Act Release No. 98429, 2023 WL 6125436 (Sept. 19, 2023); *Monolith Resources, Inc.*, Exchange Act Release No. 98322, 2023 WL 5830481 (Sept. 8, 2023); *Gaia, Inc.*, Exchange Act Release No. 97548, 2023 WL 3644535 (May 23, 2023); *Activision Blizzard*, Exchange Act Release No. 96796, 2023 WL 1765354 (Feb. 3, 2023); *The Brink’s Company*, Exchange Act Release No. 95138, 2022 WL 2239142 (June 22, 2022); *David Hansen*, Exchange Act Release No. 94703, 2022 WL 1102608 (Apr. 12, 2022); *Guggenheim Secs., LLC*, Exchange Act Release No. 92237, 2021 WL 2581714 (June 23, 2021).

³⁴ Securities and Exchange Commission Office of the Whistleblower, Annual Report to Congress for Fiscal Year 2023, at 1 (Nov. 14, 2023), <https://www.sec.gov/files/fy23-annual-report.pdf>.

³⁵ *Gai, Inc.*, supra note 32, at *6.

³⁶ *Activision Blizzard*, 2023 WL 1765354.

³⁷ *D.E. Shaw & Co. L.P.*, 2023 WL 6373163.

³⁸ Gurbir Gruwal, Remarks at New York City Bar Association Compliance Institute (Oct. 24, 2023), <https://www.sec.gov/news/speech/grewal-remarks-nyc-bar-association-compliance-institute-102423>.

whistleblowing program “is a critical part of our enforcement efforts” and that the prohibition against impeding whistleblowing “is important to the program’s success.”³⁸ And in connection with announcing one of the enforcement actions specifically, he explained that the SEC “takes seriously the enforcement of whistleblower protections” and that those drafting or using confidentiality or severance agreements “should take equally serious their obligations to ensure that they don’t impede whistleblowers from contacting the Commission.”³⁹ Similarly, the SEC’s Director of the Denver Regional Office said in connection with another enforcement action that any attempt to “disincentivize employees from communicating with SEC staff about potential violations of the federal securities laws . . . undermines [the SEC’s] regulatory oversight and will be dealt with appropriately.”⁴⁰ Overall, the message through these actions and orders could not be more clear: The SEC takes compliance with the rule prohibiting anyone from impeding whistleblowing “very seriously.”⁴¹

Other Agencies Should Establish Similar Whistleblower Programs

In light of the success of the SEC’s whistleblower program, calls to establish similar programs across the government have proliferated.⁴² Good reason exists for such calls, as whistleblowers need incentives to report all kinds of corporate misconduct and not just securities law violations. For example, in November 2022, the U.S. Department of Labor’s Occupational Safety and Health Administration ordered Wells Fargo to pay more than \$22 million for retaliating against an executive who alleged he was directed to falsify customer information and that management was engaged in price fixing and interest rate collusion through exclusive dealing.⁴³ Wells Fargo’s fake account scandal similarly involved threats and retaliation against thousands of Wells Fargo workers, which helped prolong the misconduct for years.⁴⁴ Although many laws protect whistleblowers from retaliation, few agencies have programs like the SEC’s that are designed to incentivize whistleblowing by requiring that the agency pay monetary awards to whistleblowers when their information leads to a successful enforcement action.

One approach would be for Congress to enact statutes authorizing or requiring individual agencies to establish a program similar to the SEC’s.⁴⁵ For example, the Department of Agriculture, the Department of Labor, the Environmental Protection Agency, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Energy Regulatory Commission, the Federal Maritime Commission, and the National Indian Gaming Commission all have provisions that authorize the imposition of monetary penalties in their enforcement actions. Yet none has a whistleblower program devoted to rewarding individuals who provide useful assistance to the respective enforcement program

³⁸ *Id.*

³⁹ *SEC Charges D.E. Shaw with Violating Whistleblower Protection Rule* (Sept. 29, 2023), <https://www.sec.gov/news/press-release/2023-213>.

⁴⁰ *SEC Charges Privately Held Monolith Resources for Using Separation Agreements that Violated Whistleblower Protection Rules* (Sept. 8, 2023), <https://www.sec.gov/news/press-release/2023-172>.

⁴¹ Gruwal, *supra* note 37

⁴² Alexander I. Platt, *The Whistleblower Industrial Complex*, 40 YALE J. ON REG. 688, 691 (2023).

⁴³ OSHA Press Release, *US Department of Labor orders Wells Fargo to pay more than \$22M for retaliating against executive that alleged financial misconduct* (Sept. 1, 2022), <https://www.osha.gov/news/newsreleases/national/09012022#:~:text=The%20San%20Francisco%2Dbased%20bank,a%20complaint%20from%20the%20employee>.

⁴⁴ Letter from Senator Sherrod Brown to Michael S. Barr, Vice Chair for Supervision, Board of Governors of the Federal Reserve System, and Michael J. Hsu, Acting Comptroller, Office of the Comptroller of the Currency (Oct. 4, 2023), https://www.banking.senate.gov/imo/media/doc/wells_fargo_letter_to_occ_and_fed.pdf.

⁴⁵ Martin Totaro & Connor Raso, *A Brief Proposal to Expand the Scope of Whistleblower Programs*, BROOKINGS (Sept. 23, 2021), <https://www.brookings.edu/articles/a-brief-proposal-to-expand-the-scope-of-whistleblower-programs/>.

through the issuance of monetary awards.⁴⁶ Congress could require or authorize these agencies to adopt whistleblower programs similar to the SEC's. Indeed, Senator Catherine Cortez Masto recently introduced a bill to establish a whistleblower program similar to the SEC's at the Consumer Financial Protection Bureau.⁴⁷

Another approach would be for Congress to enact a statute permitting any agency that has the authority to impose monetary sanctions to promulgate regulations establishing a whistleblower program.⁴⁸ This approach would be similar to the one taken by the North American Securities Administrators Association, which approved a Model Whistleblower Award and Protection Act for states to use in establishing whistleblower programs that provide monetary awards to whistleblowers.⁴⁹ However Congress may choose to proceed, expanding whistleblower programs to other agencies would benefit the public because “whenever an agency has the ability to impose monetary sanctions for misconduct, a whistleblower program has the potential to provide incredible value as a supplement to the enforcement of the laws the agency administers.”⁵⁰

Conclusion

The SEC's whistleblower program has been a resounding success. Congress established the program so whistleblowers would have an incentive to report potential securities law violations to the SEC, and the SEC has used the program to award almost \$2 billion to whistleblowers whose information has led to successful enforcement actions. Indeed, studies “show that the SEC has successfully won trust from workers in the United States” when it comes to reporting suspected violations of the securities laws to the agency.⁵¹ To maintain this trust, the SEC “should allocate enough resources to the claims review process so that whistleblowers are appropriately rewarded. Furthermore, the SEC should continue to take enforcement actions against companies and individuals who fail to comply with the anti-retaliation provisions of the Dodd-Frank Act.”⁵² Whistleblower tips have already allowed the SEC to obtain over \$6 billion in monetary sanctions from securities law violators, much of it for the benefit of harmed investors, and as long as the SEC continues to allocate sufficient resources to the program and punish those who impede whistleblowing, the program will continue to redound to the benefit of the public.

⁴⁶ *Id.*

⁴⁷ Financial Compensation for CFPB Whistleblowers Act, S. 1124 (118th Cong.), <https://www.congress.gov/bill/118th-congress/senate-bill/1124/text?s=1&r=81>.

⁴⁸ Martin Totaro & Connor Raso, *A Brief Proposal to Expand the Scope of Whistleblower Programs*, BROOKINGS (Sept. 23, 2021), <https://www.brookings.edu/articles/a-brief-proposal-to-expand-the-scope-of-whistleblower-programs/>.

⁴⁹ North American Securities Administrators Association, *NASAA Model Whistleblower Award and Protection Act*, <https://www.nasaa.org/wp-content/uploads/2020/11/NASAA-Model-Whistleblower-Award-Protection-Act-Legislative-Text-Commentary-102320.pdf>.

⁵⁰ Martin Totaro & Connor Raso, *A Brief Proposal to Expand the Scope of Whistleblower Programs*, BROOKINGS (Sept. 23, 2021), <https://www.brookings.edu/articles/a-brief-proposal-to-expand-the-scope-of-whistleblower-programs/>.

⁵¹ Masaki Iwasaki, *Relative Impacts of Monetary and Non-Monetary Factors on Whistleblowing Intention: The Case of Securities Fraud*, 22 U. PA. J. BUS. L. 591, 618 (2020).

⁵² *Id.*



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