



# **OVERVIEW OF THE DODD-FRANK SEC WHISTLEBLOWER INCENTIVE PROGRAM**

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# Disclaimers

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# SEC Office of the Whistleblower

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- Administers the whistleblower program
  - Coordinates and tracks whistleblower complaints
  - Available to answer any questions that may arise in connection with the program
  - Office currently consists of Chief (Sean McKessy), Deputy Chief (Jane Norberg), 4 attorneys and 2 paralegals, but growing!
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# Whistleblower Program – In General

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- Whistleblowers (“WB”) who voluntarily provide the SEC with original information that leads to a successful enforcement action in which the SEC is awarded monetary sanctions of over \$ 1 million may be eligible to receive an award of 10%-30% of the monetary sanctions collected
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# Whistleblower Program – In General

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- Internal reporting is **not required** before submitting a tip to the SEC
  - Companies **cannot require** employees to report internally before submitting a tip to the SEC
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# How the Rules Foster Internal Compliance Programs

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- Cooperation with internal compliance program is a positive factor in determining award percentage; interference with internal compliance is a negative factor
  - 120 “look back” period saves place in line for award if WB reports internally first
  - WB credited with providing all original information received by SEC from a company that self reports based on a WB’s internal complaint
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# Factors in Determining Award Amount

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- Amount of award within the 10% to 30% range is in SEC's sole discretion

## Factors that Increase Award:

- Significance of information to success of enforcement action
- Assistance of WB and counsel
- SEC's interest in deterring violations through WB awards
- Participation in internal compliance systems

## Factors that Decrease Award:

- Culpability, including WB's role in violation, scienter, financial benefit, egregiousness of fraud committed by WB
  - Unreasonable reporting delay
  - Interference with internal compliance system
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# CFTC Whistleblower Program

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# CFTC Whistleblower Office

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- Administers the whistleblower program
  - Coordinates and tracks whistleblower submissions
  - Provides information about the program to whistleblowers, representatives, Commission staff and other agencies
  - Serves as staff to the Whistleblower Award Determination Panel
  - Office will consist of director, staff attorney and paralegal
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# Rules Relevant to Compliance

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- 165.2 (p): Whistleblower definition; anti-retaliation provisions apply regardless of award eligibility.
  - 165.2(g)(4)-(5): Exclusions to “independent knowledge” for certain entity personnel, including compliance and internal audit. However, there are exceptions. 165.2(g)(7).
  - 165.2(i)(3) and (l)(2): Whistleblower can report internally and receive the benefit of an internal investigation if he/she files with the CFTC within 120 days.
  - 165.2(o): Voluntariness rules constrain award eligibility for a limited time.
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# Rules Relevant to Compliance (cont.)

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- 165.9(b)(4) and (c)(3): Cooperation with internal compliance is a positive award factor; interference is a negative factor.
  - Appendix A: Explains anti-retaliation threshold and remedies:
    - In general, no employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower (1) in providing information to the Commission “in accordance with this part 165;” or (2) in assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information.
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