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### SEC Awards Over \$17 Million to Whistleblowers in the First Two Weeks of 2022



Fiscal Year (FY) 2021 was a record-breaking year for the U.S. Securities and Exchange Commission's (SEC's) Office of the Whistleblower.

Between October 1, 2020 and September 30, 2021, the SEC issued awards to more whistleblowers, and distributed more money in whistleblower funds, than in all prior years of the program combined. Now, just a few months into FY 2022 and two weeks into calendar year 2022, all signs point to a continued robust whistleblower program. The SEC's Whistleblower Award Program SEC whistleblower awards are authorized by Section 21F of the Securities Exchange Act of 1934, [15 U.S.C. § 78u-6](#), which was introduced in 2010 by the Dodd-Frank Wall Street Reform and Consumer Protection Act. In adding this provision, [Congress](#) sought to create a "robust whistleblower program" that incentivized individuals to help the SEC identify securities violations. Under Section 21F, the SEC must issue a financial award to any individual who voluntarily provides "original information" to the SEC that leads to a successful judicial or administrative enforcement action (and certain "related actions") and results in more than \$1 million in sanctions. Certain individuals—like law enforcement officers and whistleblowers who are convicted of a crime in connection with the underlying action—are ineligible for awards. To receive an award, whistleblowers must follow specific procedures set by SEC rules, beginning with the submission of a tip. After the underlying enforcement action concludes, the whistleblower must submit an award application, which undergoes a careful review process subject to strict deadlines. In complex cases, it may take several years between the whistleblower's submission of a tip and ultimate receipt of an award. Whistleblower awards are paid from a separate fund (the SEC Investor Protection Fund), which is financed by monetary sanctions collected by the SEC. Individual awards must represent between 10% and 30% of the monetary sanctions collected in the relevant enforcement action. Within that range, the SEC has discretion to determine the amount of each award by weighing factors such as the significance of the information provided, the degree of assistance provided, the SEC's interest in deterring securities violations and incentivizing whistleblowers, and the whistleblower's culpability or delay in reporting. Whistleblowers are entitled to significant protections under the law. While final awards are [publicly available](#), the SEC redacts them to protect the identities of whistleblowers. In addition, employers are prohibited from retaliating against employees who

become whistleblowers, and, if retaliation occurs, whistleblowers can sue for reinstatement and double the amount of any backpay owed, among other remedies. The Recent Surge in Whistleblower Awards From the program's inception on August 12, 2011, through September 30, 2020, the Office of the Whistleblower awarded a total of approximately \$562 million to 106 whistleblowers. [FY 2021](#) blew those figures out of the water. In one year alone, the Office of the Whistleblower awarded approximately \$564 million to 108 whistleblowers. Between October 1, 2020, and September 30, 2021, the SEC received the largest number of whistleblower tips (over 12,200), processed more claims to the preliminary-determination stage (354), and issued more final orders resolving whistleblower claims (318) than in any other fiscal year to date. The program also issued its two largest awards to date in FY 2021—a \$114 million award to one whistleblower and another \$114 million award split between two whistleblowers. The beginning of 2022 has already seen several high whistleblower awards. On January 6, 2022, the SEC [awarded](#) \$13 million to one whistleblower who provided "information and assistance [that] helped the Commission shut down an ongoing fraud and return tens of millions of dollars to harmed investors." And on January 10 and 11, the Office of the Whistleblower issued six more orders, awarding millions of additional dollars to seven individuals. One [order](#), for example, awarded roughly \$2.6 million to a whistleblower who, after reporting internally, brought significant information to the SEC related to an existing investigation. Among other things, the individual alerted the SEC to wrongdoing occurring overseas, which would have been difficult to detect without the whistleblower's cooperation. Creola Kelly, Chief of the Office of the Whistleblower, [commented](#): "These awards highlight the importance of the SEC's whistleblower program to the agency's enforcement efforts and to its ability to maximize staff resources." The recent surge in whistleblower awards may be partially due to certain [amendments](#) to the rules governing the program, which became effective in December 2020. Among other changes, the amendments established a presumption that an eligible whistleblower should receive the maximum award amount—30% of the sanctions collected—as long as the award would not exceed \$5 million and certain "negative" factors like whistleblower culpability are not implicated. This amendment, along with others, was intended to make the claims-review process more efficient and eliminate uncertainty that might discourage whistleblowers from reporting. The amendments also expanded the SEC's view of what constitutes a "related action" for which a whistleblower may receive an award to include, for example, Department of Justice deferred prosecution agreements and SEC settlement agreements entered outside of a judicial or administrative proceeding. Another factor that may have contributed to the increase in whistleblower awards in FY 2021 is that the Office of the Whistleblower had the benefit of three extra attorneys temporarily assigned to the Office (in addition to its permanent staff of 13 full-time attorneys, its management team, and support staff). Looking Ahead The seven awards issued in the first eleven days of 2022 strongly suggest that whistleblower cooperation and awards will remain a priority for the SEC this year, especially in cases where the violations might otherwise have gone undetected, where the whistleblower offers independent analysis, and where the whistleblower's assistance helps increase the amount of money returned to victims. Recent comments in the [2021 Annual Report](#) and from SEC Chair Gary Gensler and Whistleblower Chief Creola Kelly confirm this priority. Mr. Gensler [underscored](#) in September 2021 that the SEC is committed to the continued success of its whistleblower program because whistleblower assistance "is crucial to the SEC's ability to enforce the rules of the road for our capital markets." And Ms. Kelly [emphasized](#) last month that whistleblowers play a "vital role . . . in the SEC's enforcement program and the protection of investors." FY 2021 will be difficult to top, but 2022 is off to a whistling start.

## Authors

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