

## Trends in SEC Whistleblower Program

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This past year marked the ten-year anniversary of the [U.S. Securities and Exchange Commission's \(SEC\) Whistleblower Program](#). It was a record-breaking year for the program. Not only did the Commission issue its highest award to an individual whistleblower, it also granted awards to the largest number of whistleblowers since the program's inception. In 2020, the SEC also passed new rules governing the program, which took effect in December. As these rules are implemented, it is likely that the trend of issuing awards to a greater number of whistleblowers will continue this coming year.

### **Common Characteristics of Whistleblowers and Tips in Successful Award Applications**

The Commission's 2020 Annual Report to Congress<sup>[1]</sup> provides some useful insights into characteristics shared by successful award applications. The most important factor in a successful application was the significance of the whistleblower's information. This factor assesses whether the whistleblower was the first to alert the SEC, whether the information would have been hard to detect without the whistleblower's information, and whether there was a close connection between the information provided and the resulting investigation.<sup>[2]</sup> The Commission positively assessed that factor for more than 90% of the awards.<sup>[3]</sup> The next most common factor, identified for 81% of whistleblowers who received awards, was internal reporting, which occurs when whistleblowers raise concerns to their supervisors, compliance personnel, or through internal reporting mechanisms before they provide information to the SEC.<sup>[4]</sup> The Commission also reduced awards based on certain negative factors, though it did so less frequently than it increased awards for positive factors. Notably, the SEC did not reduce any awards this past fiscal year for culpability or interference with an internal reporting or compliance system. The Commission reduced two awards for unreasonable reporting delays, which involved delays that extended over multiple years.<sup>[5]</sup>

In successful tips, whistleblowers had provided specific information to the SEC, such as identifying particular individuals involved in the misconduct or including specific documents that substantiated allegations. Award recipients also reported conduct that was either relatively current or ongoing when they reported to the SEC.<sup>[6]</sup> While 29% of award recipients received awards for providing original information that significantly contributed to an ongoing investigation, the majority of award recipients - 71% - provided original information that led Commission staff to open an investigation or examination into the reported conduct. While it is not a requirement that an individual be an employee or company insider to be eligible for an award, the majority of recipients - 68% - fell into this category.<sup>[7]</sup>

## Whistleblower Awards from 2020 and 2021

In fiscal year 2020, which spanned from October 1, 2019 through September 30, 2020, the SEC had an especially active period of awarding whistleblowers who provided timely, specific, and credible information. The Commission ordered whistleblower awards totaling approximately \$175 million, a record total amount, to a record number of whistleblowers. Thirty-nine individuals received awards this fiscal year, which was three times higher than any other fiscal year.[8] The SEC also received the highest number of whistleblower tips this past fiscal year, with over 6,900 whistleblower tips.[9] With two thirds of the awards at or near the statutory maximum award amount of 30%, whistleblower awards have been generally higher than any other fiscal year.[10] On June 4, 2020, the Commission [awarded](#) nearly \$50 million to a whistleblower, which was then the highest award to an individual. In the [order](#) accompanying that award, the Commission explained that this individual provided highly significant information, including first-hand observations of misconduct, details about elements of the scheme, and a roadmap for investigators.

The record-breaking trend from fiscal year 2020 continues into fiscal year 2021. On October 22, 2020, the SEC [announced](#) a \$114 million award to a whistleblower, the single highest award for an individual whistleblower in the program's history. The award was a combination of \$52 million in connection with the SEC case and \$62 million in connection with the related actions of another agency. As detailed in the [order](#) accompanying the award, the whistleblower's tip led the Commission to open an investigation that led to the successful enforcement action. In evaluating factors to determine the appropriate award amount, the Commission noted that, among other things, the whistleblower provided substantial assistance throughout the investigation, thereby allowing to Commission to save considerable time and resources, and the whistleblower suffered serious personal and professional hardships as a result. The SEC also announced [awards](#) to five whistleblowers totaling over \$1.1 million on January 7, 2021, and a week later, on January 14, 2021, it announced an [award](#) of nearly \$600,000 to a single whistleblower. With the January 14th award announcement, the SEC has already surpassed the total dollar amount awarded in any other fiscal year and has also surpassed over \$500 million in total whistleblower awards since the program's inception.

## Looking Ahead

The past year was notable not only for large award amounts and more award recipients, it also brought changes to the SEC's administration of the whistleblower program. On September 30, 2020, the SEC voted to pass the [final rules amending its whistleblower program](#).<sup>[11]</sup> The rules became effective on December 7, 2020. As noted in prior posts, these rules are meant to streamline aspects of the awards application process, particularly for whistleblowers who face a maximum potential award of \$5 million. As the Commission implements these new rules and as it sees changes in leadership with the new Administration, it is likely that at least one trend - to award a larger number of whistleblowers - will continue.

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[1] U.S. Securities Commission & Exchange, 2020 Annual Report to Congress, Whistleblower Program, at 27, available at <https://www.sec.gov/whistleblower>.

[2] *Id.*, at 17.

[3] *Id.*

[4] *Id.*, at 18.

[5] *Id.*, at 18.

[6] *Id.*, at 24.

[7] *Id.*

[8] *Id.*, at 9.

[9] *Id.*, at 27.

[10] *Id.*, at 17.

[11] U.S. Securities and Exchange Commission, Whistleblower Program Final Rules (Sept. 23, 2020), <https://www.sec.gov/rules/final/2020/34-89963.pdf>.