

Sen. Grassley Letter Holds Biden Nominee Accountable for Whistleblower Protections

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On March 12, 2021, Senator Charles Grassley (R-IA) sent a letter to Gary Gensler, the current nominee for Chairman of the Securities and Exchange Commission, seeking commitment to the protection of the highly successful SEC Whistleblower Program. The letter was [first reported](#) by Geoff Schweller at the Whistleblower Network News (WNN) who described the letter to the soon to be confirmed former Chair of the Commodity Futures Trading Commission (CFTC). The WNN article focused on Sen. Grassley's well-established history of championing whistleblower rights, and outlines the challenging and specific questions raised by the Senator.

Senator Grassley's letter to the nominee for Chairman of the Securities and Exchange Commission (SEC) highlights the incredibly influential role played by the Chairman, the SEC, and the agencies whistleblower programs. As noted by the Senator, the SEC whistleblower program has had an exemplary program which has given credibility to whistleblowers and the programs that reward and protect whistleblowers that is unprecedented and has set the tone for effective law enforcement worldwide. The CFTC program on the other hand, has yet to rise to the level of remarkable success to parallel that of the SEC program, and may fall [victim to its own success](#). Notably, Mr. Gensler was the Chairman of the CFTC when the agency's whistleblower program was established – and Sen. Grassley's letter goes to the heart of Mr. Gensler's experience with managing a less successful whistleblower program.

Specifically, the letter asks, "During your tenure as CFTC chairman, the CFTC did not pay an award until 2014, even though the program was signed into law in 2010. To what do you attribute this delay in whistleblower program awards?" and "Under your leadership, the CFTC began using funds from its Customer Protection Fund to pay for administrative expenses, a practice that has created concern in the whistleblower community, but still continues today. The SEC, on the other hand, continues to rely on appropriated funds to pay for whistleblower office expenses. Do you anticipate a change to this policy?" These questions are extremely relevant to the current environment considering that paying whistleblowers generous awards has been a cornerstone of the success of the SEC program and widely [supported by the public](#), and the fact that the CFTC is floundering due to funding issues that Sen. Grassley is attempting to resolve through the recently reintroduced [CFTC Fund Management Act](#). Mr. Gensler's answers to these questions have immediate significance to whistleblowers who are under consideration for awards at the SEC today, and for maintaining the continued financial integrity of the SEC and its ability to continue to operate with success.

Further, the letter addresses serious issue that also relates to Mr. Gensler's delay in awarding whistleblowers as Chairman of the CFTC, when it explains that "[t]he SEC has historically had long delays when it comes to paying whistleblowers" and that "Chairman Clayton was supportive of these efforts and informed [Sen. Grassley] on at least one occasion that he agreed that processing times were taking too long." Asking "Will you commit to working with Congress to improve the processing times for SEC whistleblower awards?"

Grassley, who serves as Chair of the Senate Finance Committee, has been an advocate for whistleblowers for decades and was instrumental in the 1986 amendments to the False Claims Act. It is clear that he has seen a number of issues play out in the whistleblower programs he helped establish.

The efficient and timely issuance of whistleblower awards and the effective administration of whistleblower programs are essential to their success. The SEC program has set the tone world-wide for what an incredibly impactful program could look like, and the impact such a program could have on the global market. Particularly, the program has returned millions of dollars to investors and the United States Government while also awarding the whistleblowers who have risked everything – without having to sacrifice in terms of staffing or administrative costs.

In a press release on the letter, SEC whistleblower attorney Stephen M. Kohn, stated that the firm "urges nominee Gensler to fully answer the questions in the letter and strongly commit to protecting the program and supporting the legislative and regulatory fixes necessary to implement Congress' intent to protect, incentivize, and reward whistleblowers."

The questions Sen. Grassley has posed are critical to understanding how Mr. Gensler will take learnings from his experience at the CFTC to continue the success and further improve the SEC program. If confirmed, Mr. Grassley would be wise to take the underlying advice seeded in Sen. Grassley's letter: continue former Chairman Clayton's openness, do not make the same mistakes you made at the CFTC, and commit to eliminating delays in whistleblower awards.

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