

What is the Process for a Whistleblower to Receive an SEC Whistleblower Award?

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Under the SEC Whistleblower Program, the SEC is required to pay awards to eligible whistleblowers who voluntarily provide the SEC with original information that leads to successful enforcement actions resulting in monetary sanctions totaling more than \$1,000,000. A whistleblower may receive an award of between 10% to 30% of the total monetary sanctions collected.

Since 2011, the SEC has awarded more than [\\$376 million](#) to whistleblowers. The largest SEC whistleblower awards to date are:

- \$50 million,
- \$39 million, and
- \$37 million.

SEC Whistleblower Process

While the SEC Whistleblower Program has proven successful at exposing and halting violations of the federal securities laws, the process is complex and many whistleblowers have been denied awards for failing to follow the [rules](#) of the program. Out of the more than 28,000 tips filed since the inception of the program, the SEC Office of the Whistleblower has paid awards to approximately 60 whistleblowers to date. An experienced SEC whistleblower lawyer will be able to skillfully guide whistleblowers through the process, maximizing the likelihood of receiving and maximizing an award.

Below is a 10-step summary of the SEC whistleblower process. Please note this is a general overview that does not address a multitude of considerations that whistleblowers and their attorneys should consider during the process. Whistleblowers should contact an experienced SEC whistleblower attorney for a detailed, fact-specific analysis the process as it relates to their claim and potential whistleblower award.

Step 1. Submit a Tip to the SEC

To qualify for an award under the SEC Whistleblower Program, the SEC requires eligible whistleblowers and/or their attorneys (whistleblowers may file anonymously if represented by an attorney) to submit tips regarding violations of the federal securities law in one of two ways:

1. By submitting a tip electronically through the SEC's Tips, Complaints and Referrals (TCR) Portal; or
2. By mailing or faxing a [Form TCR](#) to the SEC Office of the Whistleblower.

Since 2011, the SEC Office of the Whistleblower has received more than 28,000 tips. In fiscal year 2018 alone, the SEC received more than 5,200 tips. As the SEC has limited resources to review all submissions, it is imperative that SEC whistleblowers and their attorneys frame their tips in a way that will be more likely to get the SEC's attention. According to the SEC's most recent [Annual Report](#) to Congress:

In general, whistleblower tips that are specific, credible, and timely, and which are accompanied by corroborating documentary evidence, are more likely to be forwarded to investigative staff for



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further analysis or investigation. For instance, if the tip identifies individuals involved in the scheme, provides examples of particular fraudulent transactions, or points to non-public materials evidencing the fraud, the tip is more likely to be assigned to Enforcement staff for investigation. Tips that make blanket assertions or general inferences based on market events are less likely to be forwarded to or investigated by Enforcement staff.

In addition, and as a practical matter, whistleblowers are more likely to have their tips reviewed and acted on if they have an experienced SEC whistleblower lawyer advocating for them. For more information on submitting a TCR to the SEC, see our article: [5 Tips for SEC Whistleblowers and Lessons Learned from SEC Whistleblower Awards](#).

Step 2. Tip Analysis/Investigation

The SEC's Office of Market Intelligence (OMI) evaluates incoming whistleblower tips, focusing on TCRs that contain specific, credible, and timely information. If OMI determines that a TCR warrants further investigation, OMI will assign the tip to one of the SEC's regional offices, a specialty unit, or to an Enforcement group in the SEC's Home Office. TCRs that relate to an existing investigation are forwarded to the staff working on the matter.

At this stage in the SEC whistleblower process, the SEC will frequently request to interview whistleblowers and/or their attorneys to, among other things, clarify aspects of the TCR, discuss evidence, and identify potential witnesses. After interviews, whistleblowers and their attorneys will often provide the SEC with additional information and materials to support and bolster their initial TCR.

As a matter of policy, the SEC conducts its investigations on a confidential basis. The purpose of this is to:

- protect the integrity of any investigation from premature disclosure; and
- protect the privacy of the persons involved in an investigation.

Accordingly, there may be very limited information that the SEC can share with you or your attorney regarding what action, if any, the SEC has taken in response to your TCR.

Step 3. SEC Enforcement Action

As of fiscal year end 2018, the SEC was tracking more than 900 matters in which a whistleblower's TCR caused a Matter Under Inquiry (MUI) or investigation to open, or has been forwarded to Enforcement staff for review and consideration in connection with an ongoing investigation. Some of these matters may result in a successful enforcement actions with total monetary sanctions in excess of the \$1 million threshold.

Step 4. Noticed of Covered Actions Posted

At the end of each month, the Office of the Whistleblower posts [Notices of Covered Action](#) for each SEC action where a final judgment or order resulted in monetary sanctions exceeding \$1 million. Whistleblowers who submitted TCRs that led to the successful enforcement actions are eligible to apply for awards at this time.

Step 5. Submit an Application for an Award

Once a Notice of Covered Action is posted, whistleblowers have 90 calendar days to apply for an award by submitting a completed Form WB-APP to the SEC Office of the Whistleblower. In the Form WB-APP, whistleblowers and their attorneys are required to, among other things, explain why they are entitled to an award in connection with their TCR. Experienced SEC whistleblower attorneys will also provide a detailed analysis of the significant factors that the SEC considers when determining whether to increase or decrease the percentage of a whistleblower's awards.

Step 6. Preliminary Award Determinations Issued

After a whistleblower applies for an award, the SEC Office of the Whistleblower's Claims Review Staff will review the application in accordance with the rules of the program and make a *preliminary* award determination. This determination will recommend whether to issue an award and the proposed award amount. The Claims Review Staff may base this determination on:

- The Form TCR;
- The Form WB-APP;
- Sworn declarations from the SEC staff that worked on the enforcement action;

- The enforcement action's orders and pleadings; and
- Other appropriate materials identified in [17 C.F.R. § 240.21F-12\(a\)](#).

As detailed in a recent [WSJ article](#), it currently takes the SEC more than 2 years to make this preliminary determination. However, the SEC has [proposed whistleblower rule amendments](#) that would significantly speed up this process in the future.

For more information on the timing of SEC whistleblower claims, see our FAQ: [How long does it take to receive an SEC whistleblower award?](#)

Step 7. Contesting a Preliminary Determination

After the Claims Review Staff makes its preliminary determination, it will send the whistleblower a written notification of the determination and an explanation of the whistleblower's rights in the awards claims process. At this point, the whistleblower will have 30 calendar days to:

- Request the record that was used by the Claims Review Staff in making the preliminary determination; and/or
- Request a meeting with the SEC Whistleblower Office staff to discuss the preliminary determination (however, such meetings are not required and the office may decline the request).

If the whistleblower decides to contest a preliminary determination, he or she must appeal the determination within 60 calendar days of the later of: (i) the date of the preliminary award determination, or (ii) the date when the SEC Whistleblower Office made materials available for review.

Step 8. Final Orders Issued/Resolution of Appeals

If a whistleblower appeals the preliminary determination, the Claims Review Staff will consider the whistleblower's response, along with any supporting documentation provided, and will make its proposed *final* determination.

After issuing a proposed final determination, any Commissioner can review the proposed final determination within 30 days. If no Commissioner requests a review within the 30-day period, then the proposed final determination will become the final order of the Commission.

If a whistleblower chooses not to appeal a preliminary determination, or fails to appeal in a timely manner, the preliminary determination will become the SEC's final order (except where the preliminary determination recommends granting an award, in which case it will become a proposed final determination subject to the above-mentioned 30-day Commissioner approval). Notably, a whistleblower's failure to contest a preliminary determination will constitute a failure to exhaust administrative remedies, and the whistleblower will be prohibited from appealing the determination to a United States Court of Appeals.

Step 9. Awards Issued from Investor Protection Fund

Once the SEC issues a final order granting an award, all payments are made out of an investor protection fund, which was established pursuant to Section 21F(g) of the Dodd-Frank Act to fund the payment of awards to whistleblowers. The investor protection fund is financed entirely through monetary sanctions paid to the SEC by securities law violators, and no money is taken or withheld from harmed investors to pay whistleblower awards. See [15 U.S.C. § 78u-6\(g\)\(1\)-\(4\)](#). See some of the [SEC whistleblower cases](#) that have resulted in multi-million dollar awards.

Step 10. Appealing the SEC's Final Orders

If the SEC denies an award to a whistleblower, the whistleblower may file an appeal in an appropriate United States Court of Appeals (either the United States Court of Appeals for the District of Columbia Circuit, or to the circuit where the aggrieved person resides or has his or her principal place of business) within 30 days of the decision being issued.

If the SEC issues an award to the whistleblower of between 10 to 30 percent of the monetary actions collected in the action, the whistleblower may not appeal the award determination if the award was made in accordance with subsection (b). See [Rule 21F-13](#).

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