



April 30, 2021

The Honorable Debbie Stabenow
Chairwoman, U.S. Senate Committee on Agriculture, Nutrition and Forestry
328A Russell Senate Office Building
Washington, DC, 20510

The Honorable John Boozman
Ranking Member, U.S. Senate Committee on Agriculture, Nutrition and Forestry
328A Russell Senate Office Building
Washington, DC, 20510

RE: CFTC Fund Management Act is Urgently Needed to Continue the Highly Successful Whistleblower Program.

Dear Chairwoman Stabenow, Ranking Member Boozman, and the members of the U.S. Senate Committee on Agriculture, Nutrition and Forestry:

We write you as whistleblower advocates deeply concerned about the continued success of the Commodities Futures Trading Commission's Whistleblower Program. This highly successful program is facing a financial crisis as a result of the depletion of the fund from which whistleblowers are paid. A solution to this problem has been introduced, for the second time this session, in the CFTC Fund Management Act. This Act would increase the limit on funds that could be deposited into the CFTC Fund from which whistleblowers are awarded. This increase would in no way require funding from outside of the program but would instead allow the CFTC to effectively and efficiently direct proceeds of sanctions derived from enforcement actions to whistleblowers as intended by Congress when it adopted the Dodd-Frank Act creating the CFTC whistleblower program. Even better, a recent Marist Poll, indicates that American voters support whistleblower protections and believe these should be a Congressional priority.

Since the creation of its whistleblower program under the 2010 Dodd Frank Act, the Commodities Future Trading Commission (CFTC) has recovered over \$1 billion from criminal and fraudulent activity due to whistleblowers' assistance and paid over \$120 million in whistleblower awards. After a record-breaking number of whistleblower rewards granted in FY 2020, the CFTC has had to postpone the issuance of rewards – despite the legal requirement to pay awards to whistleblowers that meet the eligibility requirements.

This is due to a statutory limit on the amount of money that can be deposited into the CFTC's Consumer Protection Fund ("Fund"). The Fund is used to compensate whistleblowers who provide original information that results in a successful prosecution and other essential expenses necessary to operate the CFTC's whistleblower office. All the money deposited into the Fund comes directly from sanctions paid by wrongdoers – not from taxpayers.

While the CFTC has recovered billions in sanctions from wrongdoers thanks to whistleblower assistance over the past decade, there is a cap of \$100 million placed on deposits in the Fund. When the program was created under Dodd-Frank, this limit seemed reasonable, and for the first several years of the program, the cap created no issues. In the first 18 months of the CFTC program, only 58 individuals filed complaints with the CFTC. However, since its creation, the program has seen massive growth. In FY 2020, more than 1,000 whistleblowers filed complaints regarding commodities fraud. Currently, between 30-40% of the CFTC's anti-fraud enforcement's ongoing investigations involve whistleblowers. This growth has not corresponded with an increase in the Fund due to the cap.

Now, the Fund has run out and the CFTC has started delaying the processing of whistleblower cases due to a lack of funds and the CFTC Office of the Whistleblower might be forced to furlough staff. This leaves commodities whistleblowers, many of whom have lost their jobs and careers, in an extremely precarious and uncertain position. This funding issue is urgent, as the CFTC has communicated that it is facing serious hardship in continuing to administer its whistleblower program under the existing limited budget. The low cap on the CFTC Fund is arbitrary and was set at a time when the incredible success of the CFTC program was unforeseen. These low expectations should not hinder the success of the program or dissuade whistleblowers from providing critical information that enables the CFTC to protect investors and promote the integrity, resilience, and vibrancy of the derivatives markets.

Some may consider the passage of the CFTC Fund Management Act as a bandage solution for problems that would be addressed by the much-needed CFTC Reauthorization. But this bandage solution is critical to address an urgent need that cannot wait until the enactment of the CFTC Reauthorization. Whistleblowers often face serious hardship after taking the brave step to report wrongdoing, including blacklisting. These individuals find comfort in the possibility that this hardship will be remedied by an award, but now face strife due to award processing delays and insufficient authorization to use sanctions from enforcement actions to reward whistleblowers. The CFTC Fund does not have to be restricted in a such a manner that forces the agency to delay or even completely stop award determinations and whistleblowers should not be leveraged as a bargaining chip. Ideally, Congress could agree on all of the issues that could be remedied by a full re-authorization. However, Congress has not been able to achieve this big fix yet.

By merely raising the limit on the CFTC fund would be an easy first step for Congress to take to ensure the continued operation of the program until all the other relevant issues can be resolved. Do not make whistleblowers suffer because legislators cannot agree on issues that far extend the highly successful whistleblower program.

Please be in touch with any questions or comments you may have. We are eager to brainstorm for solutions that will enable the CFTC whistleblower program to continue working effectively to incentivize, protect, and reward highly valuable whistleblowers. This program brings in billions of dollars for the United States and intervenes in large scale criminal activities in a manner that benefits the entire economy.

A band-aid solution can go far to stop the bleeding and give both Congress and the CFTC the opportunity to improve its programming without further harming whistleblowers. Please take this important first step to improve the already highly successful program and protect whistleblowers. Act now, do not let the CFTC program fall victim to its own success.

Please contact Siri Nelson, at siri.nelson@whistleblowers.org, with any questions or comments. We are happy to help.

Sincerely,

National Whistleblower Center
National Whistleblower Legal Defense and Education Fund
Transparency International – U.S. Office
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Government Accountability Project
Project On Government Oversight
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