

## [Securities Regulation Daily Wrap Up, TOP STORY—House passes CFTC whistleblower bill, next stop the president's desk, \(Jun. 23, 2021\)](#)

Securities Regulation Daily Wrap Up

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The bill, if signed by the president, would ease growing pains that otherwise could limit the CFTC's whistleblower program.

The House passed a bill that would allow the CFTC to devote up to \$10 million to fund the operation of parts of its whistleblower program related to customer education and non-awards expenses. Lawmakers said the legislation was needed to shore up the CFTC's whistleblower program in the event that awards paid to eligible whistleblowers deplete funds for related educational and administrative expenses. The bill ([S. 409](#)), sponsored by Sen. Chuck Grassley (R-Iowa), previously passed the Senate by unanimous consent in late May. The House passed the bill as part of a package of bills considered *en bloc* by a [vote](#) of 325-103 (due to the *en bloc* nature of the vote, the final vote tally may or may not represent the full support in the House for S. 409). The bill next heads to the president's desk for his signature.

**Separate Treasury account.** The Senate bill, which was quickly marked up and [favorably reported](#) by the House Agriculture Committee, provides for the creation of a separate account at the Treasury Department into which the Commission must deposit up to \$10 million from the CFTC's Customer Protection Fund for the purpose of sustaining customer education initiatives and for paying non-awards expenses associated with the Commission's whistleblower program. The separate account would be available until October 1, 2022, after which date any remaining funds would have to be transferred back to the Customer Protection Fund.

By way of background, the CFTC's Customer Protection Fund was created more than a decade ago by Dodd-Frank Act Section 748 as part of the swaps and derivatives reform provisions contained in Title VII of the Act. The Customer Protection Fund provision, housed in Commodity Exchange Act Section 23(g), was designed to cover the expenses of awards paid to whistleblowers and the costs of related customer education initiatives. Deposits into the Customer Protection Fund include monetary sanctions the CFTC collects in enforcement actions and that are not distributed to victims unless the fund's balance exceeds \$100 million at the time a monetary judgment is collected.

The bill to shore up the CFTC's whistleblower program also would provide a statutory rule for the CFTC to access funds deposited into the separate account. Specifically, funds in the separate account could be drawn upon only if the unobligated portion of the CFTC's Customer Protection Fund were insufficient to cover the costs of customer education initiatives and non-awards expenses because of amounts ordered by the Commission to be paid to eligible whistleblowers.

Moreover, the Commission would have to report to Congress about its use of the separate account in the same manner in which it already reports to Congress regarding the agency's Customer Protection Fund. Currently, the CFTC must report to Congress by October 30 of each year regarding: (1) the CFTC's whistleblower award program, including the number and types of cases in which awards were granted; (2) a description of its customer education initiatives; (3) deposits, credits, earnings on investments, and fund beginning and ending balances; (4) amounts paid to whistleblowers; (5) amounts paid for customer education initiatives; and (6) audited financial statements.

**Stop-gap measure.** The bill's floor manager in the House, Rep. Ro Khanna (D-Calif), [told](#) members the bill is "a bipartisan, short-term legislative solution." Representative Khanna added: "Without this critical funding, CFTC

would have to suspend some operations and furlough employees in the Whistleblower Office and the Office of Customer Education and Outreach" (See *Congressional Record* at H2986-H2987).

Representative Khanna also noted that the bill was not "a replacement for the much needed comprehensive CFTC reauthorization." CFTC reauthorization legislation has eluded lawmakers over several consecutive Congresses.

The House Agriculture Committee has new leadership in Chair David Scott (D-Ga) and Ranking Member Glenn "GT" Thompson (R-Pa), as does the Senate Agriculture Committee in long-time Ranking Member and now Chair Debbie Stabenow (D-Mich) and Ranking Member John Boozman (R-Ark), so it is at least possible that fresh leadership may seek to advance a CFTC reauthorization bill in the 117th Congress.

Former House Agriculture Chair Collin Peterson (D-Minn), who lost his reelection bid to Rep. Michelle Fischbach (R-Minn), along with now retired Ranking Member, K. Michael Conaway (R-Texas), tried unsuccessfully to enact the long overdue CFTC reauthorization bill when they respectively chaired the House Agriculture Committee, Rep. Peterson during the 116th Congress ([H.R. 4895](#); [H.R. 6197](#)) (H.R. 4895 was reported by the Agriculture Committee by voice vote and placed on the House calendar in November 2019 but never received a vote by the full House; H.R. 6197 was never acted upon after introduction), and Rep. Conaway during the 115th Congress ([H.R. 238](#)) (passed House in January 2017 by a vote of 239-182).

The Republican House floor manager for S. 409, Rep. Fischbach, also backed the bill as an essential step to preserving the integrity of commodities markets. According to Rep. Fischbach, the bill does not involve any new spending. "S. 409 ensures that funds to support the functioning of the whistleblower and customer education offices are temporarily prioritized over the funds to pay whistleblower awards in order to keep the offices fully functional," said Rep. Fischbach (See *Congressional Record* at H2987).

The [final version](#) of the bill that passed the Senate and the House consists of an amendment in the nature of a substitute offered by Sens. Stabenow and Boozman (See *Congressional Record* at S3931-S3932). The bill, as [introduced](#), would have increased the CFTC's Customer Protection Fund from \$100 million to \$150 million, and would have sunset provisions for a separate fund to deal with educational and other administrative expenses of the CFTC's whistleblower program on October 1, 2021. The bill that will go to the president's desk extends the sunset to October 1, 2022, states that funds remaining in the separate account after the sunset date "shall" be returned to the Customer Protection Fund (the original bill said the funds "may" be returned) and, as Rep. Fischbach noted, the bill does not include the increased funding that was originally proposed.

Upon Senate passage of the bill, Sen. Grassley had urged the House to act swiftly. "The CFTC whistleblower program has become far more successful than Congress imagined when we set it up back in 2010," [said](#) Sen. Grassley. Some awards distributed to whistleblowers have grown to the point that they risk wiping out the award fund before it can be replenished, sidelining program staff and operations in the process. We can't allow this program to become a victim of its own success."

In light of the strong bipartisan support for S. 409, it seems likely that President Biden will sign it into law. As of yet, there is no indication of precisely when the bill could be signed into law.

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