

[Securities Regulation Daily Wrap Up, WHISTLEBLOWER NEWS—Senators offer bill to protect whistleblowers who report internally, \(Sept. 25, 2019\)](#)

Securities Regulation Daily Wrap Up

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Three Senators led by Sen. Chuck Grassley (R-Iowa) introduced a bill to amend the Commodity Exchange Act and the Securities Exchange Act to ensure that whistleblowers who report internally can partake of the Dodd-Frank Act anti-retaliation provisions.

Senator Chuck Grassley (R-Iowa) and a bipartisan group of senators introduced a bill to ensure that whistleblowers who report internally to their employers will be able to benefit from the Dodd-Frank Act's anti-retaliation provisions. The [Whistleblower Programs Improvement Act](#), recently announced by Sens. Grassley, Joni Ernst (R-Iowa), Dick Durbin (D-Ill), and Tammy Baldwin (D-Wis), would make various amendments to the Commodity Exchange Act and the Securities Exchange Act of 1934 to enhance whistleblower protections.

The Supreme Court's recent [Somers](#) decision read the plain language of the Exchange Act's definition of "whistleblower" to mean that a securities law whistleblower must report to the SEC in order to partake of the Dodd-Frank Act's anti-retaliation provisions. The Senate bill is consistent with several House-passed bills that would protect whistleblowers who report internally, including the Whistleblower Protection Reform Act of 2019 ([H.R. 2515](#)) and the PCAOB Whistleblower Protection Act of 2019 ([H.R. 3625](#)). The House bills passed by a vote of [410-12](#) and by voice vote, respectively. However, neither of the House bills would address the CFTC's whistleblower program, as the Senate bill does.

Protecting those who report internally. The Senate bill would revise the definition of "whistleblower" in both the CEA and the Exchange Act to include internal whistleblowers. The change would be made through a special rule and other revisions to the CEA and Exchange Act clarifying that the law protects whistleblowers who either report to a supervisor at their employer which employer is registered, or required to register with, the respective Commission or with a self-regulatory organization or state securities commission. A whistleblower also could report to someone else at their employer whom they reasonably believe can address misconduct, including by investigating, discovering, or terminating the misconduct.

"There's no reason why those who want to report wrongdoing internally should face potential retaliation from the exact people they are reporting to," [said](#) Sen. Grassley. "Internal disclosures can be the fastest and most effective way for a company to remedy problems, prevent fraud and protect investors."

Senator Baldwin [said](#) the bill would help hold corporations accountable for their conduct. Senator Durbin emphasized the "bipartisan consensus" for Congressional intervention to protect whistleblowers against retaliation.

Initial disposition of claim. The Senate bill also would require the SEC and the CFTC to act on a whistleblower claim within one year of the respective Commission's deadline for a whistleblower to submit a claim. In the event of multiple judicial or administrative actions, the whistleblower would have to submit a claim by the latest deadline applicable to those actions.

However, the SEC's and CFTC's enforcement directors would have discretionary authority to extend the deadline for their respective Commissions to act on a whistleblower's claim up to twice, each time for a period of six additional months. An extension would require advance notice by the enforcement director to that Commission's chair and it must be based on the complexity of the claim, the presence of multiple whistleblowers, or other good cause. The enforcement director also must give the claimant written notice of an extension. The

SEC and the CFTC may issue rules to implement the bill's timelines requirements, which would apply only to claims submitted under a deadline established after enactment.

Arbitration agreements. An addition to the Exchange Act whistleblower provisions to be made by the Senate bill would bar the waiver by any agreement of the protections and remedies afforded by the Dodd-Frank Act's whistleblower provisions. Pre-dispute arbitration agreements would be void and unenforceable. However, the non-waiver provisions would apply only to actions filed on or after, or pending as of, the date of enactment. The provision is part of the bill's technical correction provisions and bears a section title referencing commodities, although the underlying text refers only to the Exchange Act.

Additional CEA items. Under the Senate bill, the limit on monetary sanctions deposited into or credited to the CFTC's customer protection fund would be raised from \$100 million to \$150 million. The fund also would be available for "stakeholder" education about, among other things, the benefits of the incentives and protections available under the CEA's whistleblower program.

Moreover, the bill would amend the CEA's provision for the sharing of confidential information by the CFTC with other regulators by clarifying that "an appropriate department or agency" within the federal government includes the Federal Trade Commission, the Internal Revenue Service, and the State Department. Another provision in the bill would allow the CFTC to share information with foreign futures authorities on the basis of assurances regarding confidentiality the CFTC deems appropriate.

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