

MEMORANDUM

To: Senate and House Sponsors of H.R. 7195
From: National Whistleblower Center
Date: November 20, 2022
Re: The Financial Integrity Fund is an Appropriate Revolving Fund

H.R. 7195 provides incentives for whistleblowers with knowledge of anti-money laundering and sanctions-busting violations to come forward. The bill creates the Financial Integrity Fund (“Fund”), to be funded by monetary sanctions paid by fraudsters in whistleblower-initiated cases. No money is allocated from the treasury. The Fund is identical to other whistleblower-revolving funds, including those covering the Securities Exchange Act, the Commodity Exchange Act, the Auto Safety Act, the Endangered Species Act and the Lacey Act. It is also consistent with other laws that provide that whistleblower rewards be paid directly by defendants as part of any court-ordered settlement or judgment. *See* False Claims Act and Act to Prevent Pollution on Ships.

The Fund does not conflict with House Rule XXI, Clause 4, which states that bills “carrying an appropriation may not be reported by a committee not having jurisdiction to report appropriations.” As explained in the relevant Government Accountability Office (“GAO”), the bill is not an appropriations bill because the revolving fund being created by an act of Congress is not initially funded by an appropriation (and never subsequently funded outside of the receipts it obtains from third-party payments). Specifically, whether funds collected by the federal government are deposited into the treasury as miscellaneous receipts, or become available for agency use without further appropriation, depends on the enabling legislation and the type of collection. *See* U.S. Gov’t Accountability Off., GAO-17-268T, Federal Fees, Fines, and Penalties: Observations on Agency Spending Authorities (2016); Comptroller Gen. of the U.S., PAD-77-25, Revolving Funds: Full Disclosure Needed for Better Congressional Control (1977).

In H.R. 7195, the funds collected through enforcement actions qualify as “fines, penalties, and settlement proceeds.” GAO’s in-depth special report on the exact question at hand concludes that this category of funds would normally be deposited as miscellaneous receipts **unless** Congress has provided specific statutory authority for an agency to use them.¹ If passed, H.R. 7195 would provide that specific authority to the Treasury Department.

The GAO further clarified that “[a]ppropriation action is generally required” if such funding is needed to fund the initial “corpus (i.e., initial working capital).”² However, because the AML Fund does not require any appropriations, but rather will be self-funding from sanctions obtained in whistleblower cases, that fund would fall outside of the normal appropriations process.

¹ <https://republicans-oversight.house.gov/wp-content/uploads/2016/12/2016-12-01-GAO-Krause-Testimony.pdf>

² <https://www.gao.gov/assets/pad-77-25.pdf>

House Rule XXI, Clause 4 has never been used to prevent payments to eligible whistleblowers, including payments made under the Dodd-Frank Act. Indeed, because between 70-90% of sanctions obtained in whistleblower cases are always returned to the general treasury for normal appropriations, these laws are major revenue enhancers that require no taxpayer support. Moreover, the payment of whistleblower rewards outside the normal appropriations practice has been the law in the United States since 1791, when the First Congress of the United States passed numerous whistleblower-bounty laws. These early laws were cited to by the Supreme Court when the Court upheld the constitutionality of the False Claims Act. *Vermont Agency of Natural Res. V. U.S. ex rel. Stevens*, 529 U.S. 765 (2000).

Historically, revolving funds set up outside of appropriations bills regularly pass the House without approval from the Appropriations Committee. For example, H.R. 6582, establishing the House Child Care Center Revolving Fund, passed in the House on July 27, 2010 after having been reported by the Committee on House Administration only.³ In H. Rept. 111-569, the Committee on House Administration stated that creating a true revolving fund for the purposes enumerated in the statute would streamline accounting and recordkeeping processes.⁴ In the 106th Congress the House passed H.R. 5410 establishing a revolving fund for the Library of Congress without Appropriations Committee review.⁵ Examples like this are found throughout House history. In 1990, the House passed S. 1036 which sought to establish the Rural Business Incubation Fund, a revolving fund which participating businesses would contribute a portion of their profits into, and would be used to pay grants or low interest loans to certain qualifying businesses. The bill was passed in the House through a number of Committees, not including Appropriations.⁶ More recently, on July 17, 2018 the House passed H.R. 5105, which seeks to establish the “Corporate Capital Account Fund”, after the bill was reported by the Committee on Foreign Affairs and not passed through the Appropriations Committee.⁷ The GAO-Krause-Testimony report referenced in footnote 1 also lists *numerous* revolving funds that currently are operational.

³ <https://www.congress.gov/bill/111th-congress/house-bill/5682/actions>

⁴ <https://www.congress.gov/congressional-report/111th-congress/house-report/569>

⁵ <https://www.congress.gov/bill/106th-congress/house-bill/5410/all-actions?r=95&overview=closed&s=1>.

⁶ <https://www.congress.gov/bill/101st-congress/senate-bill/1036/actions?r=3&s=6>

⁷ <https://www.congress.gov/bill/115th-congress/house-bill/5105/actions?r=2&s=10>