



To: Congresswomen Rosa DeLauro

From: Stephen M. Kohn
Chairman of the Board of Directors, National Whistleblower Center

Date: November 21, 2022

Re: Cost and Benefit Analysis of AML Whistleblower Amendment (H.R. 7195)

H.R. 7195 is based on the Dodd Frank Act (DFA) whistleblower law. The DFA program is administered by the U.S. Securities and Exchange Commission's (SEC) Division of Enforcement. The record created in that program provides insight into the costs and benefits of enacting H.R. 7195.

I. PROFIT AND LOSS ANALYSIS OF THE SEC'S DODD-FRANK WHISTLEBLOWER PROGRAM

Whistleblower Program for FY 2021

Budget Summary

Total Amount paid to whistleblowers from appropriations:	\$0.00
Total Amount paid to whistleblowers from sanctions obtained from fraudsters in whistleblower-triggered cases :	\$564 million
Minimum Total Income Produced from Whistleblower Cases Assuming 30% paid on all cases:	\$1.88 Billion ¹
Maximum Total Income Produced from Whistleblower Cases Assuming 10% paid on all cases:	\$5.64 Billion
Budget for SEC Division of Enforcement:	\$1.081 Billion ²

¹ The SEC confirmed that approximately \$564 million in awards was paid to 108 individuals in FY 2021. The maximum percentage for any award is 30% of the collected proceeds, and the minimum payment for any award is 10% of collected proceeds. Based on the amount of awards paid it is possible to determine the maximum and minimum amount of total income obtained by the United States in whistleblower-triggered cases simply by assuming either that all cases were paid at the minimum 10% basis or the maximum 30% basis. See SEC Office of the Whistleblower 2021 Annual Report, pages 1 and 10, published on-line at: https://www.sec.gov/files/2021_OW_AR_508.pdf.

² See SEC Annual Report for FY 2021 (Budget), page 60, published on-line at

Conclusion: The amount of profit obtained by the United States from whistleblower generated cases is between \$1.316 Billion and \$4.076 Billion. *The most conservative estimate of the profit generated from whistleblower-cases demonstrates that the Dodd-Frank whistleblower program generates enough profit to pay for the entire SEC enforcement budget.*

II. OVERALL SUCCESS OF DODD-FRANK WHISTLEBLOWER PROGRAMS

A. Official Statement on the SEC Whistleblower Program

In FY 2021 the Commission summarized the overall success of the program as follows:

“Whistleblowers make a tremendous contribution to the agency’s ability to detect securities law violations and protect investors and the marketplace. As SEC Chair Gary Gensler recently noted, ‘[t]he assistance that whistleblowers provide is crucial to the SEC’s ability to enforce the rules of the road for our capital markets.’¹ This is evidenced most clearly by the amount of financial remedies stemming from whistleblower tips. Since the program’s inception, enforcement matters brought using information from meritorious whistleblowers have resulted in orders for nearly \$5 billion in total monetary sanctions, including more than \$3.1 billion in disgorgement of ill-gotten gains and interest, of which more than \$1.3 billion has been, or is scheduled to be, returned to harmed investors.”³

B. Deterrent Value of Dodd-Frank Program

On August --, 2022 the SEC approved two rules strengthening its Dodd-Frank whistleblower program. These changes were justified, in part, by the savings to the economy and investors cause by the fear of detection and its consequent deterrent effect on potential fraud.⁴

The Commission explained that “published research articles and current working papers” fully documented how the “SEC’s whistleblower program deters aggressive (i.e., potentially misleading) financial reporting and insider trading.”⁵

<https://www.sec.gov/files/sec-2021-agency-financial-report.pdf>.

³ Dodd-Frank requires the SEC to issue an annual report to Congress as to the results of its whistleblower program. See page 1. A copy of this report is on-line at:

https://www.sec.gov/files/2021_OW_AR_508.pdf.

⁴ See, SEC Final Rule, pp. 29-30, footnotes 70, 71 and 72 <https://www.sec.gov/rules/final/2022/34-95620.pdf>.

⁵ The Commission cited to the following sources to support its conclusion that the Dodd-Frank framework was having a significant deterrent effect on corporate fraud: See Philip G. Berger & Heemin Lee, Did the Dodd-Frank Whistleblower Provision Deter Accounting Fraud?, 60 J. ACCT. RES. 1337, 1359 (2022) available at <https://onlinelibrary.wiley.com/doi/10.1111/1475-679X.12421> (“for firms not exposed to a general [state] F[alse] C[laims] A[ct] before the Dodd-Frank whistleblower law, the new law

III. NO APPROPRIATIONS OF TAXPAYER MONEY IS NEEDED TO ENSURE THAT THE AML WHISTLEBLOWER LAW IS PROFITABLE AND EFFECTIVE

- A. Taxpayers will Profit from H.R. 7195.** H.R. 7195 establishes a self-funding revolving account paid for exclusively by monies generated in whistleblower cases. No taxpayer monies are used. Instead, based on the AML whistleblower law taxpayers will always obtain the vast amount of profit generated from whistleblower generated cases, monies that would not be obtained if were not incentivized to provide the needed evidence.
- B. H.R. 7195 has International Application.** Money laundering and sanctions-busting conduct often occurs outside the United States. The SEC has confirmed that a Dodd-Frank style law can work to hold foreign companies accountable, and incentivize non-U.S. whistleblowers to report violations. According to the 2021 Annual Report of the Office of the Whistleblower 20% of all whistleblowers paid in 2021 were non-U.S. persons.⁶
- C. H.R. 7195 has been “Scored” to Generate Profits for the United States.** According to the Congressional Budget Office’s “score” of H.R. 7195, if the Department of Treasury only prosecutes one additional case pursuant to the whistleblower law, over the next ten years the taxpayers will obtain \$297 million in profit. See [H.R. 7195 \(cbo.gov\)](#). The assumption that only one new case per/year will be generated is radically low. For example, the SEC’s Dodd-Frank program paid out rewards in only two cases between July 2010 (when the law was passed) and July 2013. By FY 2021 the Commission paid 108 whistleblower rewards, and the taxpayers obtained no less than \$1.3 billion in profits.
- D. Revolving Funds that are not started with appropriated funds can be Approved without Appropriations Committee Review.**

lowers the probability of fraud by 12%-22% relative to firms already exposed.”); see also Christine Weidman & Chummei Zhu, Do the SEC Whistleblower Provisions of Dodd Frank Deter Aggressive Financial Reporting (Feb. 2020) (unpublished manuscript), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3105521; Jaron H. Wilde, The Deterrent Effect of Employee Whistleblowing on Firms’ Financial Misreporting and Tax Aggressiveness, 92 ACCT. REV. 247 (2017); Jacob Raleigh, The Deterrent Effect of Whistleblowing on Insider Trading (Sept. 29, 2021) (unpublished manuscript), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3672026.

⁶ As set forth in the SEC’s Annual Report: “FY 2021 solidified the international nature of the whistleblower program. The successful whistleblowers recognized by the Commission hailed from six continents. In total, approximately 20% of the meritorious claimants in FY 2021 were based outside of the United States.” See page 24.

IV. H.R. 7195 ADDRESSES MAJOR WEAKNESSES IN MAJOR ANTI-CORRUPTION LAWS

The United States Strategy on Countering Corruption explicitly identified money laundering as among the most serious crimes that the United States needed to aggressively address.⁷ The Strategy explained that “Corrupt actors exploit deficiencies in anti-money laundering” laws, p. 6., and consequently listed addressing deficiencies in the current AML laws as a high priority, and identified enhanced AML laws and programs and enforcement processes as part of “Pillar Two” of the overall strategy. *See* Strategy pp. 20-24 (“STRATEGIC OBJECTIVE 2.1: Address Deficiencies in the Anti-Money Laundering Regime”).

To achieve Strategic Objective 2.1 the Strategy specifically looked toward increased enforcement based, in part on whistleblower generated information: “Bringing aggressive enforcement action, including relevant tax enforcement, against money launderers and those who enable launderers as appropriate, considering new legislation expanding criminal substantive law as needed, and expanding investigative tools as well as new information generated by whistleblower programs . . .” Strategy p.11.

H.R. 7195 will play a critical role in achieving Strategic Objective 2.1 and fighting the terrible worldwide consequences of corruption. President Biden’s strategy clearly explained the urgent need to enhance anti-corruption laws:

Corruption robs citizens of equal access to vital services, denying the right to quality healthcare, public safety, and education. It degrades the business environment, subverts economic opportunity, and exacerbates inequality. It often contributes to human rights violations and abuses, and can drive migration. As a fundamental threat to the rule of law, corruption hollows out institutions, corrodes public trust, and fuels popular cynicism toward effective, accountable governance. Moreover, the impacts of corruption frequently reverberate far beyond the immediate environment in which the acts take place. In today’s globalized world, corrupt actors bribe across borders, harness the international financial system to stash illicit wealth abroad, and abuse democratic institutions to advance anti-democratic aims. Emerging research and major journalistic exposés have documented the extent to which **legal and regulatory deficiencies in the developed world offer corrupt actors the means to offshore and launder illicit wealth. This dynamic in turn strengthens the hand of those autocratic leaders** whose rule is predicated on the ability to co-opt and reward elites.

Strategy, p. 4 (emphasis added).

⁷ *See*, <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>.