

2020

CFPB Seeks to Further Strategy to Prevent Consumer Harm

Rebecca Garcia

Loyola University Chicago School of Law

Follow this and additional works at: <https://lawcommons.luc.edu/lclr>



Part of the [Consumer Protection Law Commons](#)

Recommended Citation

Rebecca Garcia *CFPB Seeks to Further Strategy to Prevent Consumer Harm*, 32 Loy. Consumer L. Rev. 699 ().

Available at: <https://lawcommons.luc.edu/lclr/vol32/iss3/9>

This Feature Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola Consumer Law Review by an authorized editor of LAW eCommons. For more information, please contact law-library@luc.edu.

CONSUMER NEWS:

CFPB SEEKS TO FURTHER STRATEGY TO PREVENT CONSUMER HARM

Rebecca Garcia, News Editor

The Consumer Financial Protection Bureau (CFPB) regulates the offering and provision of consumer financial products or services under federal consumer financial laws.¹ The CFPB is the first federal agency whose mission is to ensure that American families are not harmed by consumer financial markets.² Some of the most well-known consumer financial protection statutes enforced by the CFPB include the Truth in Lending Act and Fair Debt Collection Practices Act.³ The CFPB not only has the authority to enforce federal consumer financial laws but it also supervises the nation's largest banks, credit unions, and their affiliates, giving it broad reach.⁴

In March of 2020, the CFPB announced three steps it will take to advance its strategy on preventing consumer harm.⁵ First, the Bureau announced it will implement an advisory opinion program to provide clear guidance to assist companies in better

¹ *About us*, CONSUMER FINANCIAL PROTECTION BUREAU, <https://www.consumerfinance.gov/about-us/>. (last visited Apr. 9, 2020).

² *CFPB Begins Taking Whistleblower Tips*, CONSUMER FINANCIAL PROTECTION BUREAU (Dec. 15, 2011), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-begins-taking-whistleblower-tips/>.

³ Zac Arbitman & Jason Zuckerman, *CFPB Whistleblower Program Could Plug Enforcement Gaps*, LAW360 (Apr. 2, 2020), <https://www.law360.com/articles/1256821/cfpb-whistleblower-program-could-plug-enforcement-gaps>.

⁴ *CFPB Begins Taking Whistleblower Tips*, *supra* note 2.

⁵ *CFPB Takes Key Steps to Prevent Consumer Harm; Proposes Whistleblower Award Program, Other Measures*, CONSUMER FINANCIAL PROTECTION BUREAU (Mar. 6, 2020), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-key-steps-prevent-consumer-harm-proposes-whistleblower-award-program/>.

understanding their legal and regulatory obligations.⁶ Under this program, parties will submit requests for an opinion to the CFPB and the CFPB will publish the corresponding advisory opinion to its website and the Federal Register.⁷ Second, the Bureau will amend and reissue its responsible business conduct bulletin that was published in 2013.⁸ The bulletin will emphasize the importance of responsible business conduct in increasing the effectiveness of the CFPB's supervisory and enforcement work. Third, the Bureau plans to work with Congress to advance proposed legislation that would allow the CFPB to reward whistleblowers who report violations of Federal consumer financial law.⁹ This new legislation would amend Title X of the Dodd-Frank Act and provide the CFPB with authority to establish a whistleblower award program.¹⁰

Whistleblowers were first provided a direct line of communication to the CFPB in December of 2011.¹¹ The CFPB created an email address and a telephone hotline that welcomed information about potential violations from current or former employees, vendors, contractors, and competitor companies, with the goal of increasing enforcement of federal consumer financial laws.¹² Whistleblowers who are employees of providers of consumer financial products and services are protected by anti-retaliation provisions that aim to encourage employees to report violations.¹³ Employees who report information to the CFPB may not be terminated or discriminated against for providing the information, testifying about a potential violation, filing any lawsuit under any federal consumer financial law, or objecting to or refusing to participate in any violation of federal consumer financial law.¹⁴

While whistleblowers are heavily protected from retaliation, which some might consider a good reason to report a

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *CFPB Begins Taking Whistleblower Tips*, *supra* note 2.

¹² *Id.*

¹³ *Information for Industry Whistleblowers*, CONSUMER FINANCIAL PROTECTION BUREAU, <https://www.consumerfinance.gov/policy-compliance/enforcement/information-industry-whistleblowers/>. (last visited Apr. 9, 2020).

¹⁴ *CFPB Begins Taking Whistleblower Tips*, *supra* note 2.

violation, there is currently no financial incentive for whistleblowers to report violations. For some employees, reporting an employer can be too high a risk without additional security. Even though they cannot be fired, they risk social isolation and other forms of retaliation from co-workers. These risks may be too great for certain employees. If the CFPB is able to enact the whistleblower award program, it will provide an additional incentive for employees who otherwise would not report violations to now do so.

In order to protect consumers, the CFPB wants to enact legislation that will allow the Bureau to provide an incentive for employees to report violations when they believe their company is not complying with the law.¹⁵ Under the proposed legislation, in cases where a whistleblower provides voluntary information that leads to a successful enforcement action, the CFPB will be able to pay the whistleblower an award based on the monetary sanctions collected in the action.¹⁶ The award will vary by case, ultimately depending on the type and magnitude of both the violation and the whistleblower's cooperation.¹⁷

Under the proposed legislation, a whistleblower is defined as any individual, or two or more individuals working jointly, who provides original information relating to a violation of Federal consumer financial law.¹⁸ In cases in which the whistleblower provides information that leads to the successful enforcement of any rule or regulation, the whistleblower will be eligible for an award equal to not less than 10% and not greater than 30% of what has been collected of the monetary sanctions imposed in the action.¹⁹ "Successful enforcement" includes any possible settlements that are reached between the violator and the CFPB.²⁰ If the CFPB is not able to collect at least \$1,000,000 of the monetary sanctions imposed, the CFPB will still provide the whistleblower with an award that is equal to 10% of what is collected or \$50,000, whichever is greater.²¹ While potential whistleblowers may be encouraged by the chance to receive 10 to 30% of a large sanction amount,

¹⁵ See *CFPB Takes Key Steps*, *supra* note 5.

¹⁶ *Id.*

¹⁷ Dodd-Frank Wall Street Reform and Consumer Protection Act § 1017A (proposed Mar. 6, 2020).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

they should be aware that there is an award maximum. No matter the sanctions that are imposed, no single whistleblower can receive an award greater than \$10,000,000.00.²²

The proposed award cap is likely to be a topic of debate if and when Congress considers adopting this proposed legislation, as some believe the cap reduces the incentive to report the largest frauds.²³ For example, the CFPB levied a \$1 billion penalty against Wells Fargo for imposing improper fees to lock in mortgage rates and for charging hundreds of thousands of customers for automobile insurance they did not need.²⁴ If the proposed legislation existed in 2018 without the award cap, a whistleblower's award could have ranged from \$100 million to \$300 million. However, with the award cap, the whistleblower would not have been able to recover more than \$10 million. While this reward cap limits the potential upside to individuals who undertake great financial and personal risk by reporting a violation, the individual could still walk away with at least \$10 million that he or she did not have previously. For the vast majority, that will be a great enough incentive to step forward.

While the award amount can vary from 10 to 30% of collected imposed sanctions, the determination of the final amount is left to the CFPB's discretion.²⁵ The CFPB can decide how much to award a whistleblower by considering the significance of the information provided by the whistleblower to the successful enforcement of the administrative proceeding, the overall degree of assistance provided by the whistleblower, the interest of the CFPB in deterring violations of federal consumer financial laws by giving such awards, and other factors that the CFPB considers relevant.²⁶ On its face, the proposed legislation may appear to benefit whistleblowers the most but along with giving the CFPB discretion to determine the award amount, the proposed legislation puts a number of protections in place to ensure that consumer safety is still a priority.

For example, an individual who helps the CFPB in a successful enforcement action is not automatically entitled to at least

²² *Id.*

²³ Arbitman & Zuckerman, *supra* note 3.

²⁴ In the Matter of Wells Fargo Bank N.A., No. 2018-BCFP-0001 (Apr. 20, 2018).

²⁵ Dodd-Frank Wall Street Reform and Consumer Protection Act § 1017A (proposed Mar. 6, 2020).

²⁶ *Id.*

10% of the collected imposed monetary sanctions.²⁷ Any whistleblower who is found to be liable for the conduct in the administrative action will not receive an award.²⁸ Nor will any whistleblower who planned and initiated the conduct at issue in the administrative proceeding or any whistleblower who submits information that has already been submitted by another whistleblower.²⁹ These restrictions help ease concerns that an employee who is involved in the conduct in question will turn to the CFPB in an effort to recover a large award and avoid punishment him or herself. Ultimately, the goal of the proposed legislation is to encourage employees to report violations so that consumers are protected on a daily basis.

There is reason to believe this proposed CFPB whistleblower program will be effective, as it is modeled after the successful SEC whistleblower reward program.³⁰ Since the SEC program's inception, whistleblower tips have enabled the SEC to recover over \$2 billion in monetary sanctions, of which almost \$500 million is scheduled to be returned to harmed investors.³¹ A CFPB whistleblower award program could significantly increase enforcement of federal consumer financial protection laws, as the CFPB has authority over a broad array of consumer financial products and services, and prevent greater consumer harm.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Arbitman & Zuckerman, *supra* note 3.

³¹ U.S. SECURITIES AND EXCHANGE COMMISSION, WHISTLEBLOWER PROGRAM (2019).