



**G A O**

Accountability \* Integrity \* Reliability

United States Government Accountability Office  
Washington, DC 20548

---

## Decision

**Matter of:** U.S. Commodity Futures Trading Commission—Availability of the Customer Protection Fund

**File:** B-321788

**Date:** August 8, 2011

## DIGEST

The Commodity Futures Trading Commission administers the Customer Protection Fund, which is available for the payment of awards to eligible whistleblowers and the funding of customer education initiatives. The Commission may use the Fund to establish an office and hire personnel to carry out whistleblower incentive and customer education programs. The Commission may deposit certain monetary sanctions in the Fund as of July 21, 2010, the date that the Fund was established by law, despite the fact that the Commission has not yet issued implementing rules and regulations.

## DECISION

The Commodity Futures Trading Commission Chief Financial Officer requested a decision regarding the availability of the Commission's Customer Protection Fund. Letter from Chief Financial Officer, Commission, to the Comptroller General (Mar. 24, 2011) (Request Letter). The Customer Protection Fund was established on July 21, 2010, for the payment of awards to eligible whistleblowers whose original information leads to the successful resolution of certain judicial or administrative actions and for the funding of customer education initiatives. 7 U.S.C. § 26. The Fund is credited with certain monetary sanctions and, if the Secretary of the Treasury chooses to invest some amounts at the Commission's request, with the interest on and the proceeds from the sale or redemption of investments held in the Fund. *Id.* §§ 26(g)(3), 26(g)(4). The Commission asks whether it can use the Fund to establish an office and hire personnel to carry out its whistleblower incentive and customer education programs. We conclude that the Commission may do so. These administrative and salary expenses are necessary and incident to carrying out the programs.

The Commission also asks whether it can credit the Fund with certain monetary collections that it received after July 21, 2010, when the Fund was established by law, but before the effective

date of the Commission's implementing rules and regulations. We conclude that the Fund is available for deposits as of the date that the Fund was established.

Our practice when rendering decisions is to obtain the views of the relevant agency to establish a factual record and the agency's legal position on the subject matter of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at [www.gao.gov/legal/resources.html](http://www.gao.gov/legal/resources.html). The CFO's request letter contained the pertinent facts and the legal views of the Commission.

## BACKGROUND

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), amending the Commodity Exchange Act, requires the Commission to implement whistleblower incentive and customer education programs. Pub. L. No. 111-203, title VII, subtitle A, pt. II, § 748, 124 Stat. 1376, 1742–43 (July 21, 2010), codified at 7 U.S.C. § 26(g). The law established the Fund, which is available to the Commission without fiscal year limitation for two purposes:

(1) “the payment of awards to whistleblowers” who provide original information that leads to the successful resolution of a covered judicial or administration action, or related action<sup>1</sup> and (2) “the funding of customer education initiatives.”<sup>2</sup> 7 U.S.C. § 26(g)(2). A covered judicial or administrative action is one brought by the Commission under the Commodity Exchange Act or its rules and regulations and results in monetary sanctions exceeding \$1,000,000. *Id.* § 26(a)(1). Customer education initiatives are designed to help market participants and the public protect themselves against fraud or other violations of the Commodity Exchange Act or its rules and regulations. *Id.* § 26(g)(2).

The Fund is authorized to be credited with certain monetary sanctions and is available to make payments without further congressional action. *Id.* § 26(g). Specifically, the Fund must be credited with any monetary sanctions collected by the Commission in a covered judicial or administrative action that are not otherwise distributed to victims in such an action. *Id.* § 26(g)(3)(A). The Secretary of the Treasury may also invest a portion of the Fund's balance at the Commission's request. *Id.* § 26(g)(4)(A). The interest on any obligations held in the Fund and the proceeds from the sale or redemption of any such investments must be credited to the Fund. *Id.* § 26(g)(4)(C).

The Commission also receives an annual lump sum appropriation to “carry out the provisions of the Commodity Exchange Act.” See, e.g., Full-Year Continuing Appropriations Act, 2011, Pub. L. No. 112-10, div. B, title V, § 1543, 125 Stat. 38, 135 (Apr. 15, 2011); Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010, Pub. L. No. 111-80, title VI, 123 Stat. 2090, 2118 (Oct. 21, 2009).

---

<sup>1</sup>The amount of the whistleblower's award must be between 10 and 30 percent of the monetary sanctions collected in such an action. 7 U.S.C. § 26(b). The Commission has discretion to determine the amounts of the award. *Id.* § 26(c). The Commission must consider the significance of the information, the programmatic interest in deterring violations of commodity exchange laws and regulations, and other relevant factors. *Id.* § 26(c)(1)(B).

<sup>2</sup>Dodd-Frank also established the Investor Protection Fund, administered by the Securities and Exchange Commission (SEC), for the payment of awards to eligible whistleblowers under securities laws. Pub. L. No. 111-203, title IX, subtitle B, § 922(a), 124 Stat. 1376, 1844 (July 21, 2010), *codified at* 15 U.S.C. § 78u-6(g).

The Commission asks us two questions. First, the Commission asks if it may use the Fund to establish an office and hire personnel to carry out whistleblower incentive and customer education programs. Request Letter, at 2. The Commission explains that the office will “design, implement, and oversee the customer education initiatives; will intake and track whistleblower tips and complaints; make whistleblower eligibility determinations at the beginning and throughout the claims process; and perform related ministerial functions.” Id.

Second, the Commission asks whether it may deposit monetary sanctions collected after the establishment of the Fund, but before the effective date of the Commission’s implementing rules and regulations. Id. The Fund was established by law on July 21, 2010, but required rules and regulations have not yet been issued. Request Letter, at 2.

## **DISCUSSION**

### Whistleblower Incentive and Customer Education Programs

Appropriations are available only for the objects for which they were made unless otherwise provided by law. 31 U.S.C. § 1301(a). However, every item of expenditure does not need to be specified in an appropriations act. B-309715, Sept. 25, 2007. Appropriations are available for expenses that are necessary or incident to achieving the object of the appropriation. Id. An analysis of whether an appropriation is available for certain expenses recognizes that when Congress makes an appropriation for a particular purpose, by implication it authorizes the agency involved to incur expenses that are necessary or incident to the accomplishment of that purpose. Id.

We use a three-part test to determine whether a specific expenditure is a necessary expense of an appropriation: (1) the expenditure must bear a logical relationship to the appropriation sought to be charged; (2) the expenditure must not be prohibited by law; and (3) the expenditure must not be provided for by another appropriation. B-306748, July 6, 2006. We did not identify any law prohibiting the Commission from using the Fund. Therefore, we must analyze the first and third parts of the test, determining whether these expenses bear a logical relationship to the purposes of the Fund and whether these expenses are provided for by another appropriation.

In applying the first step, we note that an agency has reasonable discretion to determine how to carry out the objects of its appropriation. B-306424, Mar. 24, 2006. In order to carry out its new functions, the Commission would like to establish a new office and hire personnel. Request Letter, at 1. It is understandable that the Commission will incur personnel and administrative costs to implement payments of awards to whistleblowers. As the Commission explains, it will need personnel to receive whistleblower tips and complaints, determine who is eligible for an award and how much the individual should receive based on the Commission’s criteria, and generally manage the whistleblower claims process. Request Letter at 2; 7 U.S.C. §§ 26(b), 26(c). Likewise, it is understandable that the Commission will incur personnel and administrative costs in funding customer education programs. The Commission notes that it would need personnel to design, implement, and oversee its initiatives to inform customers how to protect themselves against fraud and other commodity exchange violations. Request Letter at 2; 7 U.S.C. § 26(g)(2)(B). These costs are necessary and incident to achieving the purposes for which the Fund was established. We conclude, therefore, that the costs bear a logical relationship to the Fund, and satisfy the first step of our three-part test. See 72 Comp. Gen. 317 (1993).

In applying the third step of the test, we look to see if there is an appropriation, other than the Fund, that is more specifically available for these expenses.

If an agency receives a specific appropriation for a particular object, it should use that appropriation to the exclusion of a more general appropriation broad enough to cover the same objects. B-289209, May 31, 2002. In addition to the Fund, the Commission receives a general lump sum appropriation to “carry out the provisions of the Commodity Exchange Act.” See Pub. L. No. 112-10, § 1543; Pub. L. No. 111-80, 123 Stat. at 2118. Clearly, the lump sum appropriation is available for the Commission’s personnel and administrative costs generally, and, arguably, could therefore, be available for the costs at issue here. We think the better view, however, is that the Fund is the more specific appropriation for expenses incidental to customer education initiatives and the whistleblower incentive awards. Although Dodd-Frank does not expressly address administrative and personnel costs for the Fund, we take note of the fact that the primary costs of customer education initiatives would be personnel costs, and those costs are necessarily part of “the funding of customer education initiatives.” Similarly, parallel construction between whistleblower incentive awards and customer education initiatives would suggest that we read the statutory language providing that the Fund is available for “payment of awards to whistleblowers” to cover costs, including administrative and personnel costs, incidental to making whistleblower payments.

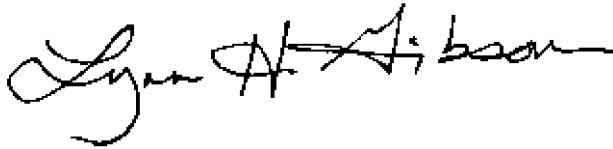
#### Timing of Deposits in the Customer Protection Fund

Dodd-Frank established the Fund on July 21, 2010. Pub. L. No. 111-203, title VII, subtitle A, pt. II, § 748(g), 124 Stat. 1376, 1742–43 (July 21, 2010), codified at 7 U.S.C. § 26(g). The Act required the Commission to issue implementing rules and regulations for the amended provisions, which includes the Fund. 7 U.S.C. § 26(j). The Commission asks whether it may deposit monetary sanctions collected from a covered judicial or administrative action after the establishment of the Fund, but before the effective date of the Commission’s rules and regulations. Request Letter, at 2.

The Commission may deposit certain monetary sanctions in the Fund as of July 21, 2010, the date that the Fund was established by law, despite the fact that the Commission has not yet issued implementing rules and regulations. The Act does not make the availability of the Fund contingent upon the Commission issuing rules and regulations. See 7 U.S.C. §§ 23(g), 23(j). Once the Commission deposits monetary sanctions in the Fund, the collections become available for obligation by the Commission for authorized purposes. It is important, nevertheless, that the Commission issue implementing rules and regulations, not only because the Act requires them, but also because rules and regulations are significant for the proper accountability and control of federal funds.

## CONCLUSION

The Commission may use the Fund to establish an office and hire personnel to carry out whistleblower incentive and customer education programs because such expenses bear a logical relationship to the purposes of the Fund. The Commission may deposit certain monetary sanctions in the Fund on or after July 21, 2010, the date the Act established the Fund, despite the fact that the Commission has not yet issued implementing rules and regulations.

A handwritten signature in black ink, appearing to read "Lynn H. Gibson". The signature is fluid and cursive, with the first name "Lynn" being the most prominent.

Lynn H. Gibson  
General Counsel