

Update on the Dodd-Frank Financial Reform Act (for Whistleblowers)

Dear Clients, Colleagues and Friends of KLS :

On July 16, 2010, the Dodd-Frank Act was approved by the U.S. Congress and is currently awaiting President Obama's signature. Spanning more than 2,300 pages, it affects almost every part of the financial industry. Not only does it extend the current regulatory regime to more types of companies (insurance, credit rating agencies) and financial products (e.g. derivatives), it gives government agencies a host of new enforcement tools.

Among the requests of the Securities and Exchange Commission (SEC) that were included in the final legislation is a dedicated whistleblower program, administered by the newly created Office of the Whistleblower, which reports directly to Congress and the Office of the Inspector General. In addition to providing a forum to handle these complaints, to increase the number of tips from industry insiders there are now financial incentives to those who bring information that leads to a successful judicial or administrative enforcement action.

Prior to this bill, the only circumstance under which a whistleblower could be compensated outside a Federal False Claims Act case was if he brought an insider trading case, and the potential award was limited to 10% of the penalty assessed by the SEC or DOJ. Few came forward and those five people that did received only a cumulative total of \$159,537 over the 20+ year duration of the program. It was not until the IRS program started offering bounties of 15-30% for tax fraud cases that whistleblowers began coming forward in substantial numbers (permitting the recovery of \$65 billion in 2008). The SEC is now attempting to stimulate a similar response with its program that guarantees the whistleblower a percentage of the total fines levied.

There are now, however, several issues potential whistleblowers must navigate before they can claim an award of between 10 and 30% of the amount in question (fines levied must exceed \$1,000,000):

- Qualification – various tests are set forth to qualify a whistleblower prior to discussion of any bounty.
- Anonymity – In response to large numbers of unsubstantiated tips coming from anonymous sources, there is now a requirement that anonymous whistleblowers have legal counsel known to the SEC.
- Contracts – May be necessary to secure a bounty.
- Confidentiality can be a significant aspect to whistleblowing – and must be assured when Whistleblowers come forward. There are new rules relating to recourses available to whistleblowers in case of harassment and retaliation.

In order to receive due consideration for a legitimate and verifiable (documentable) whistleblower complaint, we strongly urge you to contact us to bring a complaint

forward. Our experience working closely with the relevant offices of the SEC positions us optimally to work with you.

Note: this legislation further expands the recourse for an employee who has been wrongfully terminated or harassed as a result of filing a whistleblower complaint. If this has happened to you within the past ten years, you should contact us immediately to determine whether you are eligible for compensation including reinstatement, lost salary with interest, and attorneys' fees.

This update on current legislation is provided as a courtesy to clients and does not constitute legal advice.