

Update on the Whistleblower Provisions of the Dodd-Frank Financial Reform Act

Dear Clients, Colleagues and Friends of KLS :

On July 21, 2010, the Dodd-Frank Act was signed into law by President Obama. 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 (e.g. insurance, credit rating agencies) and financial products (e.g. derivatives), it revamps or eliminates certain government agencies and gives others 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 office to handle whistleblower complaints that reports directly to Congress and the Office of the Inspector General. In addition to providing a forum to prioritize and streamline the handling of whistleblower complaints, the legislation includes financial incentives if the information provided 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 an insider trading case, and the potential award was limited to 10% of the penalty assessed by the SEC or Department of Justice (DOJ). Few came forward and those five people that did hardly benefited from doing so: only \$159,537 has been disbursed 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 (leading to the recovery of \$65 billion in 2008). The SEC is now attempting to stimulate a similar response with its program that guarantees the whistleblower 10-30% of the total fines levied.

There are now, however, several issues/procedural hurdles that potential whistleblowers must navigate before they can claim a percentage of fines exceeding \$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.
- Further, confidentiality is typically important to would-be whistleblowers and must be assured when they come forward. (There are now additional avenues of recourse available to whistleblowers that have been harassed or suffered from retaliation.)

To ensure you receive due consideration for a legitimate and verifiable (documentable) whistleblower complaint, we strongly urge you to contact us prior to bringing a complaint forward. Our experience working closely with the relevant offices of the SEC will allow us to make sure/make certain your case receives the attention it deserves.

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, contact us immediately to discuss whether you are eligible for compensation including reinstatement, lost salary with interest, and attorneys' fees.

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

Kachroo Legal Services, PLLC