



Regulatory: Reviewing the Dodd-Frank Whistleblower Program's 2011 annual report

Companies should use the SEC's findings to review their internal reporting and compliance programs.

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Section 924(d) of the Dodd-Frank Act requires the Securities and Exchange Commission's (SEC) Office of the Whistleblower to report annually to Congress on whistleblower complaints and its responses. In November 2011, the SEC issued its inaugural annual report on the Dodd-Frank Whistleblower Program. Because the final rules implementing the Dodd-Frank Act did not become effective until Aug. 12, 2011 and the SEC's fiscal year ended Sept. 30, 2011, the report includes only seven weeks of data describing just 334 whistleblower submissions. Despite the small sample, the report offers a significant takeaway for corporations: internal reporting and compliance programs matter.

Submissions summary

There are a couple of notable metrics included in the report:

1. Geographic origin of submissions The SEC received whistleblower submissions from 37 states and 11 foreign countries. Of the 334 whistleblower submissions, 87 did not report the geographic origin of the submission. Foreign whistleblower submissions, where identified, out-paced all states but California, with the majority originating in China, the U.K. and Australia. Domestically, the largest source of whistleblower submissions was California (34), followed by New York (24) and Florida (19). Given the nation's population and the location of public companies' financial and operational centers, the California and New York numbers are unsurprising.

2. Nature of submissions The report listed 11 different complaint categories. The largest percentage of whistleblower submissions—25.2 percent—were identified as non-descript “other” and “blank” violations. “Market Manipulation” comprised 16.2 percent of the submission complaints, followed by “Offering Fraud” at 15.6 percent and “Corporate Disclosure & Financials” at 15.3 percent. The FCPA category, which pundits have expected to comprise a significant portion of whistleblower submissions under Dodd-Frank, accounted for only 3.9 percent of the submissions.

3 reasons the report calls for effective internal reporting and compliance programs

1. Less submissions received than expected. Though the 334 submissions only represent a seven-week reporting period, the number is lower than most have predicted. Many predicted the Dodd-Frank whistleblower award structure (providing payments between 10 and 30 percent of the SEC's recoveries based on the whistleblower submissions, once the SEC's recovery exceeds \$1 million) would lead to a flood of submissions, but that has not been the case. The relatively small number of submissions is likely due to the Dodd-Frank Act's encouragement of internal reporting designed to proactively address complaints by working with the whistleblower before reporting to the SEC.

Consequently, now more than ever, it is important that companies solidify and enhance their internal reporting mechanisms to ensure potential whistleblowers have a meaningful opportunity to resolve potential or reported problems before they reach the SEC.

2. **Significant number of foreign country submissions.** Of the 334 total submissions, 32 originated abroad. Although the report did not indicate which complaints originated from foreign countries, companies with operations abroad should monitor this activity closely. At the very least, they should ensure their internal reporting and compliance programs are communicated effectively and followed in foreign locations. Companies also should train all employees, regardless of location.

3. **Ease of submitting to the SEC.** The report subtly emphasizes the ease of making submissions to the SEC. In a footnote, the SEC notes the data reflected in the report represents the information reported by whistleblowers in their online questionnaires or hard copy submissions. Companies should consider this ease of reporting to the SEC when reviewing their internal reporting and compliance programs. Although the Dodd-Frank Act encourages internal reporting, it is not required for a whistleblower to be eligible for an award. Accordingly, the ease of a company's internal reporting mechanisms and possible incentives for whistleblowers to report to the company first, are key in preventing whistleblower submissions to the SEC.

About the Author



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