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SEC Awards \$2.5 Million to Government Employee Whistleblower

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The Securities and Exchange Commission (SEC) recently announced an award of approximately \$2.5 million to an employee of a U.S. government agency for providing a whistleblower tip. The tip helped the SEC launch an SEC investigation, and the tipper provided continued assistance to the SEC thereafter, which helped accelerate the investigation. This multi-million dollar payout appears to be the SEC's first whistleblower award to a government employee. It thus provides an important reminder that the SEC has many avenues for obtaining information about potential wrongdoing. As a result, when potential red flags arise, entities and their personnel should promptly and efficiently investigate and address the issues.

The SEC's Whistleblower Program

Enacted in July 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) added provisions designed to encourage and incentivize whistleblowers to report potential securities law violations to the SEC. Whistleblowers who provide information that leads to a successful enforcement action involving sanctions of over \$1 million may receive an award of 10% to 30% of the amount collected by the SEC. The SEC has repeatedly emphasized the helpfulness and importance of whistleblower reports to its enforcement program. Numerous multi-million-dollar payouts to SEC whistleblowers have reinforced this message.

SEC's First Award to a Government Employee

SEC whistleblower announcements are typically devoid of specifics, in order to protect the anonymity of tippers. The order here thus does not identify the name of the government employee or his/her agency, the company involved, the subject matter of the investigation, the total sanctions levied against the company, or the percentage bounty awarded to the whistleblower.

The order states only that an employee of "a domestic government agency" became "aware of certain improper conduct by a company," which the person reported to the SEC with supporting documentation, causing the SEC to open an investigation. Thereafter, the individual continued to provide "specific, timely, and credible information, helpful documents, significant ongoing assistance, and relevant testimony that accelerated the

pace of the investigation.”

Future Government Employees Whistleblowers?

This \$2.5 million award is a significant sum of money for anyone, much less to a government employee. It thus may provide a strong incentive to other government employees to be on the lookout for possible SEC whistleblowing opportunities. Indeed, the order provides a detailed footnote explaining the limitations on issuing awards to government employees.

Employees of federal, state, or local government agencies are eligible for awards under the SEC’s whistleblower program, with two exceptions.

First, awards are not available to employees of “an appropriate regulatory agency.” Under Exchange Act Rule 21F-4(f) and Section 3(a)(34), this means employees of the SEC and of various banking agencies, including the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation. The whistleblower here apparently was not employed by those agencies.

Key takeaways:

- Notably, the list of “appropriate regulatory agencies” does not include the IRS, environmental agencies, agencies that enforce foreign trade regulations, employment agencies, health and safety agencies, healthcare agencies, or any of the litany of state and local agencies.
- Entities and their personnel should be aware, therefore, that their interactions with these agencies could result in an SEC whistleblower tip, in addition to whatever action those agencies themselves may take.

Second, awards are not available to employees of “a law enforcement organization.” The SEC explained that although “neither the Exchange Act nor the whistleblower rules define ‘law enforcement organization,’ the term is generally understood as having to do with the detection, investigation, or prosecution of potential violations of law.” Interestingly, the whistleblower who received this award worked for an agency that had certain components with law enforcement responsibilities, but the specific component in which the tipper worked did not.

Relying on dictionary definitions of “organization,” the SEC concluded that “it is reasonable to interpret the exclusion flexibly and, in appropriate cases such as this one, to apply it only to employees of a clearly separate agency component that performs law enforcement functions, rather than to all employees of an entire agency that happens to have been granted law enforcement powers among its many other separate responsibilities and power.”

Key takeaways:

- Many federal, state, and local agencies segment their enforcement divisions from other aspects of the agency. Yet even non-law

enforcement personnel may have significant authority to obtain information and documents from entities and personnel within their jurisdiction. It is possible that such documents and information may end up at the SEC.

- This multi-million dollar award could cause future interactions with non-law enforcement personnel to expand in scope, if the issues involve the possibility of a whistleblower tip. Entities and individuals may want to consider whether and what pushback is appropriate, as well as determine what confidentiality provisions may apply.
- This award highlights the increased likelihood of SEC involvement, even while the tipper's government agency has taken action. The order notes that "this is not a situation where a claimant sought to circumvent the potential responsibilities that his or her government agency might have to investigate or otherwise take action for the misconduct." Although the SEC specifically expressed no view about how it would decide, it seems less likely that an award would have been issued if the whistleblower had acted otherwise.
- Entities and personnel undergoing virtually any government scrutiny may want to assess the SEC's potential interest in that issue, as well as consider undertaking steps that may place the firm or individuals in the best position possible if the SEC does receive a tip and begins investigating. Such steps might include:
 - consulting outside SEC enforcement counsel;
 - promptly and effectively investigating matters;
 - appropriately remediating concerns;
 - updating policies, procedures, and controls; and
 - considering other appropriate action.

In sum, the SEC's first whistleblower bounty to a government employee—at \$2.5 million—provides an important reminder that SEC enforcement remains active and vigilant.

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