

United States Senate

WASHINGTON, DC 20510

November 16, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Mary Jo White
Chair
Securities and Exchange Commission
100 F St. NE
Washington, DC 20549

Dear Chair White:

When Congress passed the Dodd-Frank Act in the wake of the 2008 financial crisis, House and Senate leaders expanded the protections afforded to whistleblowers and provided new incentives to encourage them to report potential violations to the SEC. Dodd-Frank contained two key provisions intended to expand whistleblower participation: Section 922(a) provided the SEC with the authority to award cash payments to whistleblowers who provided actionable tips,¹ and Section 924(d) instructed the SEC to establish a new division tasked with overseeing the whistleblower program, the Office of the Whistleblower (OWB).²

The SEC's Office of the Inspector General (SEC OIG) completed a congressionally-mandated analysis of the implementation of the whistleblower program in January 2013, finding that "the SEC is generally prompt in responding to information that is provided by whistleblowers."³ Specifically, the IG found that 53% of whistleblower tips, complaints, and referrals (TCRs) were reviewed on the date they were received, that 63% of "No Further Action" (NFA) determinations were made within 30 days, and that 93% of "Point of Contact" (POC) assignments took place within 30 days. More recently, SEC has acted in high-profile ways to protect whistleblowers. For example, in April of this year, the SEC announced an enforcement action against KBR Inc. "for using improperly restrictive language in confidentiality agreements with the potential to stifle the whistleblowing process."⁴

¹ Pub. L. No. 111-203, § 922(a), 124 Stat. 1841 (2010).

² Pub. L. No. 111-203, § 924(d), 124 Stat. 1841 (2010).

³ SEC Office of the Inspector General. Report No. 511, Evaluation of the SEC's Whistleblower Program (2013).

⁴ SEC, Press Release, Companies Cannot Stifle Whistleblowers in Confidentiality Agreements (Apr. 1, 2015), available at: <http://www.sec.gov/news/pressrelease/2015-54.html>.

While the IG concluded that this performance was acceptable, the report identified some outliers. For example, the report identified one case where the time between submission, review, and designation of a whistleblower's case was 249 days.⁵ The IG report also found that "there is no standard to determine whether the response time is prompt or not," and that this lack of a performance metrics may result in the degradation of performance and . . . unnecessarily long response times to whistleblower information."⁶

In response to this finding, the SEC OIG recommended that SEC establish formalized performance standards for the whistleblower program. The OWB concurred with this recommendation and reported in its 2014 report to Congress that it had taken steps to implement those recommendations.⁷

The whistleblower program is an important tool in the SEC's efforts to combat securities fraud and almost three years have passed since the SEC OIG evaluation of this program. We are writing to seek an update on the program's performance and on OWB's progress in implementing the OIG recommendations. We ask that you provide answers to the following questions no later than December 8, 2015:

- 1) A description of OWB's progress in implementing the recommendations in the 2013 SEC OIG report.
- 2) The number of whistleblower tips, complaints, and referrals (TCR) received by the OWB from July 1, 2013 – June 30, 2015.
- 3) The average time it took for OWB staff to initially review tips, complaints, and referrals once they were received, and the percent of tips, complaints, and referrals reviewed within three days.
- 4) The percentage of tips, complaints and referrals that received a "no further action" designation, and, for these tips, complaints and referrals, the average time between the initial review and the designation and the percentage that were designated for "no further action" within 30 days.
- 5) The percentage of tips, complaints and referrals that were assigned a point of contact, and for these tips, complaints, and referrals, the average time between the initial review and the assignment to a point of contact and the percentage that were assigned to a point of contact within 30 days.

⁵ SEC IG, Report No. 511 at 16.

⁶ SEC IG, Report No. 511 at 17.

⁷ SEC, Office of the Whistleblower, 2014 Annual Report to Congress on the Dodd-Frank Whistle Blower Program, at 9 (2014).

- 6) The percentage of tips, complaints, and referrals that are designated as a “matter under investigation.”
- 7) The percentage of “matters under investigation” that are being tracked by the OWB’s Case Tracking System.
- 8) The average amount of time between the posting of a Notice of Covered Action and the relevant whistleblower being contacted by OWB’s staff.

We look forward to receiving your response and reviewing your progress. Please feel free to contact Brian Cohen of Senator Warren’s staff at (202) 224-4543 or Paul Junge of Chairman Grassley’s staff at (202) 224-5225 if you have any questions.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary



Elizabeth Warren
Ranking Member
Subcommittee on Economic Policy