

SEC Whistleblower Attorney: Benefits of Experienced Representation



Article By

[Jason Zuckerman](#)

[Matthew Stock](#)

[Zuckerman Law](#)

[Whistleblower Protection Law Blog](#)

- [Criminal Law / Business Crimes](#)
- [Securities & SEC](#)
- [All Federal](#)

Thursday, June 1, 2017

SEC Whistleblower Program

In its short history, the SEC Whistleblower Program has already awarded [more than \\$154 million](#) to whistleblowers. Under the program, the SEC will issue awards to whistleblowers if they provide original information that leads to successful enforcement actions with total penalties in excess of \$1 million. A whistleblower is eligible to receive an award of between 10-30 percent of the total sanctions imposed.

If represented by an attorney, the SEC Whistleblower Program allows whistleblowers to submit tips anonymously. This is an important rule that other reward programs, such as the [IRS Whistleblower Program](#), do not allow. Even if whistleblowers do not proceed anonymously, however, there are significant benefits from having an experienced SEC whistleblower attorney guide whistleblowers through the process. These benefits are aimed at securing and maximizing an SEC award, and are (arguably) far more important than acting as a conduit for whistleblowers to submit tips anonymously.

Get Noticed by the SEC

Since 2011, the SEC Whistleblower Office has received over 18,000 tips. According to the SEC Whistleblower Program's [2016 Annual Report to Congress](#), the number of

whistleblower tips has increased each year since the inception of the program:

- FY2011: 334
- FY2012: 3,001
- FY2013: 3,238
- FY2014: 3,620
- FY2015: 3,923
- FY2016: 4,218

The SEC's Office of Market Intelligence (OMI) evaluates every tip submitted to the SEC Whistleblower Office and assigns "specific, credible, and timely" tips to members of the SEC staff for further investigation or analysis. Due to the increased quantity of tips, it is imperative that whistleblowers prepare high-quality submissions that grab the OMI's attention. Otherwise, whistleblowers run the risk of having their tip fall to the wayside like most of the 18,000 tips.

An experienced SEC whistleblower attorney can help whistleblowers get noticed by drafting a [Form TCR](#) that will grab the OMI's attention and highlight the most important aspects of the claim. A [well-prepared submission](#) will also increase the likelihood that the SEC will act on the tip. Further, an experienced attorney will draft a TCR with an eye to the future and include significant factors that could increase the percentage of a potential award.

In addition to preparing the TCR, an SEC whistleblower attorney can determine the appropriate evidence to provide (or not provide) to the SEC as well as advise the whistleblower on any potential exposure as a result of providing the evidence. Finally, and as a practical matter, the SEC will likely view a whistleblower's tip as more credible if it is submitted by a reputable SEC whistleblower attorney who has prior experience working with the SEC Whistleblower Office.

Work Effectively with the SEC

If the OMI is interested in a whistleblower's tip, an SEC investigator will generally request to interview the whistleblower, or the whistleblower's attorney (if the submission was anonymous), to gain a better understanding of the violation(s) and the evidence. Importantly, this is when the SEC determines whether it will open an enforcement action based on the tip. An experienced SEC whistleblower attorney can help whistleblowers work effectively with the SEC and increase the probability that the SEC will take action.

First, an SEC whistleblower attorney can prepare whistleblowers for SEC interviews as well as assist whistleblowers during the interviews to distill the complex federal securities laws violations into clear language. While SEC investigators are well-versed in federal securities law, the schemes are typically intricate and an attorney's assistance explaining the violations can be critical. Furthermore, attorneys can prepare detailed supplemental disclosures to educate the SEC about the specific details of the violations. Indeed, most successful whistleblower claims have numerous exchanges with the SEC about the violations, the evidence, etc.

Next, an attorney's assistance could result in an increased award percentage.

According to the SEC Whistleblower Program's [final rules](#), the SEC will "assess the degree of assistance provided by the whistleblower and any legal representative of the whistleblower" when determining whether to increase the amount of an award. An attorney's assistance can be particularly helpful to anonymous and/or international whistleblowers (especially if the whistleblowers are unable to attend interviews at the SEC's offices). Moreover, an experienced SEC whistleblower attorney can provide significant assistance to the SEC through expert analysis prior to an investigation.

Finally, an attorney can help to "sell" the claim to the SEC. As noted, the SEC Whistleblower Office receives thousands of tips each year and the SEC has limited resources. An experienced SEC whistleblower attorney can advocate for the whistleblower's claim and explain why the SEC should use its limited resources to investigate the specific violation of federal securities laws.

Maximize Your Award Percentage

Whistleblowers must be "eligible" to receive an SEC award. An experienced SEC whistleblower attorney can determine what steps a whistleblower must take to be eligible for an award. [Many key compliance personnel, including internal auditors, external auditors, officers, and directors may incorrectly assume that they are not eligible for awards under the program.](#) In certain circumstances, however, the SEC allows these employees to report violations and become eligible for awards. Assessing eligibility requirements may be the difference between a multi-million-dollar award or nothing.

An SEC whistleblower attorney also knows the significant factors that whistleblowers must consider even before submitting a tip to the SEC. These factors may increase (or decrease) the amount of a whistleblower's award. For example, whistleblowers may receive an increased award percentage if they participate in internal compliance systems. An attorney can spot these issues for whistleblowers in order to maximize a potential award.

Finally, SEC whistleblower attorneys can track the [Notices of Covered Actions](#) and draft an [application for an award](#) when a whistleblower's tip leads to a successful enforcement action. The application should detail the assistance provided by the whistleblower and the whistleblower's attorney and emphasize additional significant factors to maximize the SEC award.

Beat the Odds

Of the 18,334 tips submitted to the whistleblower office as of FY2016, the SEC has only issued awards to 44 whistleblowers – or approximately .24% of the total tips. While the program is headed in the right direction (issuing more than \$57 million to 13 whistleblowers in FY2016), obtaining an award is far from a foregone conclusion, even when a whistleblower's tip contains specific, credible, and timely information about violations of federal securities laws. Whistleblowers should consider working with an experienced and reputable SEC whistleblower attorney to maximize their probability of being the next whistleblower to obtain a large SEC award.

Source URL: <https://www.natlawreview.com/article/sec-whistleblower-attorney-benefits-experienced-representation>