Whistling through the Graveyard: The Future of the SEC's Whistleblower Program

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The SEC announced on November 14 that it had made an award of more than $20 million to another whistleblower. This was the third highest award since the agency began paying them out in 2012, and it brings the total of such awards under the SEC's program to more than $130 million. Although the current whistleblower program has been criticized by conservative groups such as the U.S. Chamber of Commerce (in part because it does not require whistleblowers to give notice to their employer at the same time they give it to authorities), the program has relatively broad bi-partisan support and has given rise to a cottage industry of law firms specializing in representing whistleblowers. Among supporters of whistleblowing generally are Senator Charles Grassley (R-Iowa), a key Trump ally during the presidential campaign, and Congressman Jeb Hensarling (R-Texas), chair of the House Financial Services Committee and chief proponent of legislation that would roll back most of the Dodd-Frank Act's regulatory provisions. Hensarling's proposed legislation, the Financial Choice Act, however, does not touch the existing legislative structure for SEC whistleblower awards. The Trump transition website calls for dismantling Dodd-Frank, but there are no specific references to whistleblower regulations in the writing on the wall. So, speculation is widespread that the SEC's whistleblower program, in some form, will survive the decimation of Dodd-Frank and the demise of its regulatory provisions.

It is too soon to say what changes, if any, may be made to the program (for example, adding the simultaneous notice requirement or disqualifying anyone involved in criminal activity from receiving an award, as proposed by the Chamber). It is also too soon to predict whether the surviving program would be used as forcefully going forward as it has been during the tenure of outgoing SEC Chair Mary Jo White (since the SEC enforcement staff must receive approval from the Commission, which will have a Republican majority, before proceeding with an enforcement action involving a whistleblower reward).

Under the current framework, whistleblower awards may range from 10 percent to 30 percent of the money collected when the monetary sanctions exceed $1 million.

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Whistleblower award payments are made from an investor protection fund established by Congress that is funded through sanctions paid by securities violators, so no money is taken or withheld from investors to pay the awards.