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Whistleblower Group Issues Report Saying Cash Incentive Doesn't Drive Informants To Authorities

Whistleblowers are no more likely to go to the government than internal compliance officers with concerns even when a windfall cash payment is dangled over their heads, a [report](#) from an advocacy group said.

Studying cases filed under the False Claims Act since Jan. 1, 2007, the National Whistleblowers Center found that 89.7% of employees who filed a *qui tam* suit reported their findings internally beforehand. This finding contradicts [warnings from business groups and law firms](#) that say a provision in the Dodd-Frank financial regulatory reform law creating a new bounty program for securities violations will undermine compliance programs by encouraging employees to go directly to the government. Previously, whistleblowers could only collect on securities violations involving insider trading.

"In my 25 years of representing whistleblowers, I don't know if I've ever represented someone who didn't try to go internally first," said Stephen Kohn, executive director of the Center, in an interview.

The bounty program, whose proposed rules were [issued in early November](#), has a 10%-30% payout to informants who blow the whistle on securities violations that result in a penalty of more than \$1 million. Business groups have been saying that large penalties, such as the landmark \$800 million Foreign Corrupt Practices Act settlement with Siemens AG, will result in a windfall for whistleblowers.

With the prospect of such huge bounties, doesn't that provide a big incentive to go to the government?

Kohn presents a mathematical argument to counter that fear. He points out that the bounty program for the False Claims Act has no minimum penalty, with an average payout to informants of \$1.7 million. By contrast, he says the minimum set for the Dodd-Frank program will result in many informants receiving nothing, which will lead to a much lower average than under the False Claims Act.

Not only will the average payout be smaller, he said, but it's not even a factor in an employee's decision-making in where to go to reveal the wrongdoing.

"An employee's behavior don't factor in at the end, when the government sets the reward," Kohn said. "What controls how big the reward is down the pike is completely outside the understanding of the employee."

The determination on whether to press charges against a company based on whistleblower information under Dodd-Frank is completely at the discretion of the regulators, Kohn said. If the SEC or the Justice Department don't pursue False Claims Act charges, a whistleblower can file their own *qui tam* suits.

"If you're a whistleblower analyzing your options, which would you rather do, False Claims or Dodd-Frank? 10-1, I'd choose False Claims Act," Kohn said.

Meanwhile, Securities and Exchange Commission budget constraints have [put the whistleblower office on hold](#) despite the fact that the SEC is receiving at least [one tip a day](#).