

COVID-19 Pressure-Tests Whistleblower Hotlines Worldwide

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by Jeffrey Matthews

Despite the many challenges that anti-fraud professionals have faced during the coronavirus crisis—remote investigations, virtual due diligence and cross-border data collection and protection regimes to name a few—fraud hotlines, our most effective anti-fraud measure, seem pandemic-proof. In fact, the U.S. Securities and Exchange Commission's (SEC's) Whistleblower Program continues to break records in both the number of tips received and money awarded in fiscal year 2020 (see chart below).

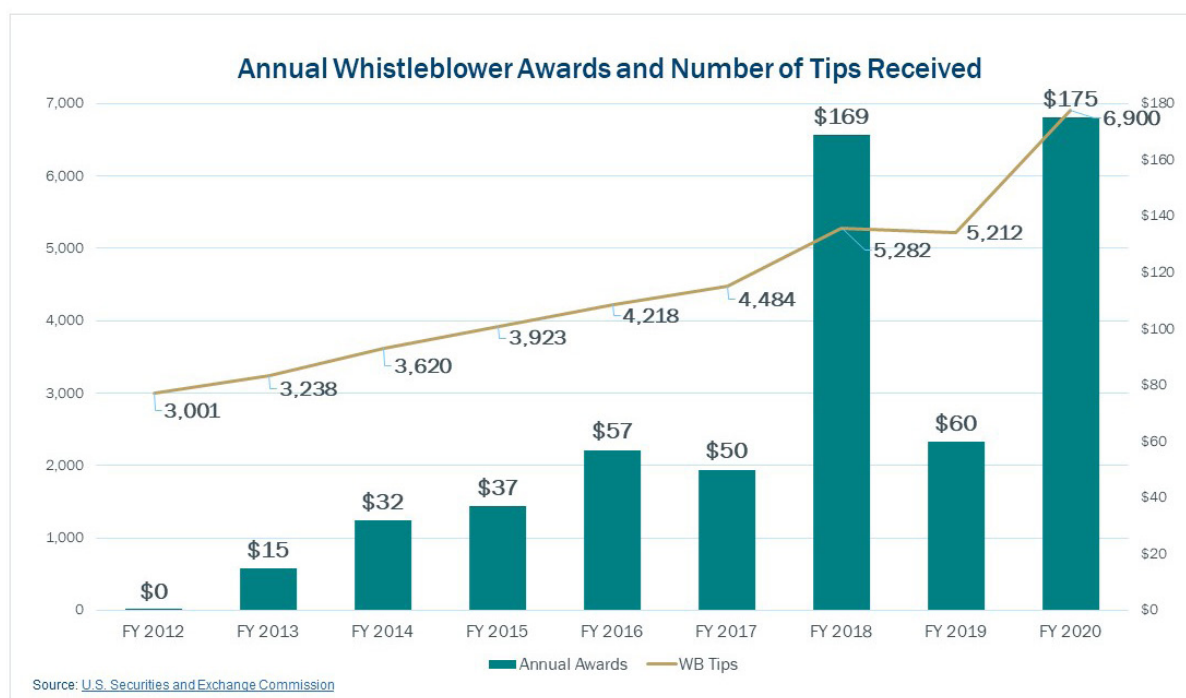


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The SEC has added staff and increased the use of resources across multiple divisions in an effort to manage the flow of whistleblower information and maintain efficiency.

In addition to the lure of a hefty payout, such as the \$114 million awarded in October (more than doubling the previous highest amount), Anita Bandy, the associate director for the enforcement division of the SEC, notes that a rise in complaints in times of market disruption or volatility is nothing new. The Office of the Whistleblower experienced a similar rise in complaint levels during the financial crisis of 2008-2009, in which the resulting economic recession revealed a nearly 20% increase in financial fraud schemes.

Further, SEC officials report that of the 69% of insiders paid in fiscal year 2020, 85% raised their concerns internally before reporting to the SEC. These statistics aid in uncovering the three primary factors behind an overall uptick in whistleblower claims:

1 Enhanced anonymity through remote work One way any hotline's effectiveness can be measured is by a tipster's confidence in using it. They will ask themselves: *Is the hotline confidential? Will I be labeled a whistleblower? Will I face retaliation?* Those with knowledge of fraud or similar concerns are now largely working from the privacy of their own homes and may perceive the risk of being exposed as whistleblowers as being much lower while working remotely. After all, only their pets and family members can hear their calls or see their computer screens. Therefore, tipsters may have more confidence that they will remain anonymous.

2 More Time and Weakening Connections With more personnel teleworking and countless others furloughed, potential whistleblowers have the requisite time and

space away from the office to think a bit more about something that didn't seem quite right. CNN Business recently reported that corporate layoffs are spreading to higher-paid office workers. ExxonMobil, Chevron, Charles Schwab, Raytheon, Wells Fargo, Goldman Sachs, Salesforce, Allstate and CNN owner Warner Media have all cut thousands of white-collar jobs. When executives "in the know" have more time to process, or when those jettisoned executives have their sights set on revenge, it can make for a perfect storm for a call into a hotline.

Even highly engaged employees may erroneously believe that more traditional, robust investigative methods are no longer possible given the pandemic. If a tipster no longer has access to meaningful data and resources, it may be much easier to email or call a hotline number rather than look up and reach out to contacts in the HR or internal audit departments. As a result, whistleblowers may view calling the hotline as their only viable option to report wrongdoing.

3 Financial Incentives Let's face it; \$728 million is a lot of money! That is precisely how much the SEC has paid to 118 whistleblowers since 2010. While the monetary incentive does provide a compelling argument for more calls to the SEC, Jane Norberg, Chief of the Office of the Whistleblower Enforcement Division for the SEC, recently shared that the majority of tipsters end up on the SEC's doorstep only when the company refuses to act. "Whistleblowers are often employees who can't live with seeing wrongdoing happening at the company," she said. Although many companies have made internal reporting structures and mechanisms more friendly for whistleblowers to report internally, ensuring that employees are seen and heard is more challenging than ever in the current environment.

Strengthening Culture and Reporting Processes

Regardless of the factors driving a rise in whistleblower complaints, auditors and investigators must make it a priority to ensure that reporting processes are up to the task. As a first step, employee reporting mechanisms should continue to function at the highest level, or actually exceed expectations, during this unprecedented time.



1 Communicate Working remotely creates distance between the employee and the employer. Working from home can also blur the once clear boundaries between work and life. This is a perfect time to remind employees of their corporate responsibility to report fraud and abuse as they see it. It's also crucial to communicate, not only through written emails, but also to advise "in person"—via videoconference, for example—to create a better connection. Making direct phone calls, sending recorded video messages or posting webinars to a company intranet can create or reinforce a "live" connection, helping staff to internalize the communication while sending a message that "you are there" to provide guidance and oversight. Educating employees, vendors and customers on acceptable behavior, as well as their avenues to report inappropriate behavior, is paramount.

2 Instill confidence Keeping sensitive information in strict confidence is also extremely important. While it is impossible to

promise information will be kept confidential, assurances can be given that information will be shared only with those on a need-to-know basis. Further, there should be equal emphasis placed on a company's non-retaliation policy, as there is an open-door policy and whistleblower program. Assuring a concerned employee that the company adheres to a strict non-retaliation policy and showing support in that regard can pay dividends in the future.

3 Close the loop There is a delicate balance in transparency. Letting tipsters know their voices are heard and that their concerns are taken seriously are both important components to an effective whistleblower program. Regular reporting to management can provide an early warning system and alert other potential tipsters that calls are being taken seriously. Sharing the outcomes of investigations or, at a minimum, the number of ongoing inquiries, helps to reinforce the perception of detection that can serve as a critical deterrent to fraudsters. As such, a company should carefully assess the risk of not investigating versus investigating, as both send resounding messages.

4 Monitor and test Just as with any other control, a hotline is only valuable if it is effective. To determine its effectiveness, a hotline must be monitored and tested to ensure it is working properly. Analyzing data on the quality of calls can aid in identifying employees' understanding of critical business issues. Annual surveys in which employees rate their hotline awareness and confidence levels are also good measures. Comparing the number of cases opened and resolved annually is yet another sound metric. Each of these are far better measures than simply capturing the number of calls year-over-year.

During this time of uncertainty, one thing remains constant: Whistleblower hotlines are an effective tool in uncovering fraud and misconduct. Companies experiencing an increase in calls should analyze the resulting data to help prioritize investigations, and reassure concerned current or former employees, vendors, or customers that their voices are being heard.

Organizations experiencing a decline in hotline calls altogether should not assume that “no news is good news.” Too often, silence means devastating reputational, regulatory and legal impacts will soon follow. Use any lull in hotline activity as an opportunity to assess the whistleblower program’s effectiveness and make the necessary improvements. For those companies that have yet to implement a whistleblower hotline, there is certainly no better time than now. Because who knows what challenges await in the new year.

About the Author

Jeffrey Matthews, a Partner with StoneTurn, brings over 20 years of experience in financial investigations, forensic accounting and litigation support. He has served as a financial expert in corruption and white-collar criminal cases, as well as multi-jurisdictional business disputes, testifying in multiple civil and criminal matters at the state and federal levels. His clients include the nation’s top law firms, Fortune 100 legal departments and government investigative agencies.



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