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House Bill Would Encourage SEC Whistleblowers to Use Company Programs First

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One of the more controversial rules to come out of the SEC since Dodd-Frank was the rules implementing its whistleblower program. Under the rules as adopted by the SEC, a whistleblower does not have to report internally before approaching the SEC. This was the most charged aspect of the final rule and was opposed by two SEC commissioners. In addition, many business groups opposed this provision of the rules because they felt, among other things, that dispensing with an internal report would effectively defeat compliance programs that companies spend a lot of time and money to develop and implement. Conversely, the plaintiffs' bar welcomed this rule because they believed that many compliance programs were ineffectual.

On July 12, four House Republicans introduced legislation known as the Whistleblower Improvement Act to overturn this controversial aspect of the SEC's whistleblower rules. Under this proposed legislation, in order to be eligible to collect the whistleblower bounty, the reporting employee would be required to first report this information to his or her employer before reporting to the SEC. This proposed legislation does not, however, require internal reporting on those

cases where there is evidence the purported misconduct was committed by or had the complicit involvement of management's highest levels or evidence of bad faith on the employer's part. This House bill also seeks to restrict the recovery of whistleblower bounties by those who are culpable for wrongdoing. Finally, this proposed legislation imposes a burden on the SEC to advise a company that it possesses information from a whistleblower and that the SEC is conducting an investigation the alleged behavior before conducting an enforcement proceeding. By receiving this information, a company could potentially remediate the reported problem without having to be submitted to an enforcement proceeding.

Undoubtedly, the advocates on both sides of the debate will make their voices known with respect to this proposed change to the SEC's whistleblower rules. The proposed legislation can be seen as attempting to strike a middle ground between a whistleblower never having to internally report before going to the SEC and always having to first internally report. Whether this legislation gains any traction remains to be seen. If this proposed legislation becomes law, it could ultimately place a greater burden on a whistleblower to determine whether he or she must first internally report or can go right to the SEC. Under this proposed approach, the whistleblower has to make the right decision or else forgo the whistleblower bounty. By the same token, company's need to always make certain that they have adequate programs that promote a culture of compliance and encourage internal reporting regardless if a whistleblower must first internally report before approaching the SEC.

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