

Taylor Scott Amarel
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**AMBIGUITY AND LACK OF CLEAR COMMUNICATION IS NEGATIVELY IMPACTING THE
SEC'S WHISTLEBLOWER PROGRAM**

Emily Pasquinelli
Office of the Whistleblower
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
[REDACTED]

Brent Fields, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Simple Changes in Communication Could Significantly Increase the Efficiency and Effectiveness of the SEC's Whistleblower Program and Drastically Reduce the Growing Delays in Processing Whistleblower Claims.

Dear Ms. Pasquinelli, Mr. Fields, and concerned parties:

I am writing today to express very serious and well documented concerns that the SEC's Whistleblower Program is shooting itself in the foot by implementing a confusing, difficult, and often ambiguous communication policy. The poor communication of the SEC's Whistleblower Program has negatively impacted the effectiveness of the Whistleblower Program, prejudiced Whistleblower rights, and worked contrary to the intent of Congress.¹

To carry out the intent of Congress and letter of Dodd-Frank, the SEC must take immediate action to reduce the complexity of its communications so that individual Whistleblowers are not forced to retain counsel to shift through the legalese and regularly ambiguous or conflicting communications from the SEC's Whistleblower Office. The SEC needs to reduce the complexity of its communications and set expectations correctly.

Indeed, while there have been numerous non-public instances of the SEC's Whistleblower Program communicating false, mis-leading, or detrimental information to Whistleblowers,² this letter will focus on more obvious and public statements by the SEC's Whistleblower Program - which often cause confusion rather than clarity.

¹ Please note, this is not the first instances of Whistleblowers and members of Congress voicing their concerns about the ineffective communication of the SEC's Whistleblower Program. In fact, lawyers, Whistleblowers, and members of Congress have expressed their concerns about poor communication almost continuously since at least 2015. Unfortunately, not much action has been taken to improve the communication of the SEC's Whistleblower Program.

² Previous concerns of failed communication include: A.) Incorrectly instructing Whistleblowers how to submit large files in 10MB partitions. It took the SEC months to realize that the instructions given to the Whistleblower actually resulted in the corruption of Whistleblower tips; B.) Failing to provide Whistleblowers with a means to submit large documents via mail in an encrypted manner; C.) Telling some Whistleblowers that tips are processed in a first-in-first-out order, while telling others Whistleblowers that there is a triage process; D.) Many other communication errors such as some enforcement staff telling Whistleblowers to submit all of the relevant documents while other enforcement staff instructed Whistleblowers to submit concise and succinct tips not to exceed 5-7 paragraphs.

Unnecessarily Ambiguous and Complex Language:

In the table below, one of the many complex statements by the Whistleblower Program is analyzed by its readability scores. It is noted and further emphasized that a significant number of very critical SEC statements or form instructions are rated near the top of the scales for their difficulty in reading. Furthermore, statements such as question 8a in the Form WB-APP are ambiguous in their meaning. As a result, Whistleblowers may be forced to retain counsel to properly navigate the confusing Whistleblower process - or Whistleblowers may interpret an ambiguous statement in a way that is different from the SEC's interpretation.

Statement	Flesch–Kincaid Reading Ease Score ³	Gunning Fog Index ⁴
8a. Did you provide the information identified in Section C above before you (or anyone representing you) received any request, inquiry or demand that relates to the subject matter of your submission (i) from the SEC, (ii) in connection with an investigation, inspection or examination by the Public Company Accounting Oversight Board, or any self-regulatory organization; or (iii) in connection with an investigation by the Congress, any other authority of the federal government, or a state Attorney General or securities regulatory authority?	23.86	28.11

Further emphasis is warranted by the fact that the text “before you” can be interpreted as meaning: "in front of you"; or "previous to". The complexity of this language makes it unclear as to what the SEC is actually asking and leaves significant room for a Whistleblower to interpret this question in a grammatically correct manner but with multiple potential meanings. This is very serious, because whistleblowers that interpret “before you” as “in front of you” may answer the Yes or No question in a different manner that could negatively impact their Whistleblower rights.

Lack of Examples:

Despite having a list of potential illegal activity that can be reported⁵, the SEC has not provided any examples or guidance on how to report various violations and how the Whistleblowers tips could be formatted to ensure maximum efficiency.

Poorly Formatted Forms:

The Form WB-APP should have sections for all of the factors used by the Whistleblower Program to increase or decrease an award. Without these factors being mentioned on the the Form WB-APP, the SEC's Whistleblower Program is giving Whistleblowers the impression that it is not necessary or helpful to provide this information.

³ https://en.wikipedia.org/wiki/Flesch%E2%80%93Kincaid_readability_tests

⁴ https://en.wikipedia.org/wiki/Gunning_fog_index

⁵ <https://www.sec.gov/whistleblower/frequently-asked-questions>

As a result Whistleblowers often leave this information out, the Whistleblower then receives a preliminary determination that was below the Whistleblowers expectations. As a result, the Whistleblower then initiates an appeal that takes additional SEC resources and delays the payment of other Whistleblower awards. The SEC should proactively identify ways to reduce the reasons why an Whistleblower would appeal an preliminary determination and providing better communication, expectations, and having a more organized Form WB-APP is an excellent and highly effective start.

Sincerely Yours,

Taylor Scott Amarel