Dodd-Frank:

Big Headlines, Not-So-Big Impact

A survey by the Society of Corporate Compliance and Ethics and the Health Care Compliance Association

July/August 2011

HCCA
HEALTH CARE COMPLIANCE ASSOCIATION

SOCIETY OF CORPORATE COMPLIANCE AND ETHICS

Health Care Compliance Association and
Society of Corporate Compliance and Ethics
6500 Barrie Road, Suite 250, Minneapolis, MN 55435
HCCA 888 580 8373 | *SCCE* 888 277 4977 or +1 952 933 4977
hcca-info.org | corporatecompliance.org

Introduction

In July 2010 the Dodd-Frank Act was passed, leading to a long and loud period of discussion about the Act's likely impact. Perhaps no area gained more headlines than the Act's provision for whistle-blowers to receive between 10 and 30% of any potential fines over $1 million collected by the U.S. government.

Some foresaw this provision triggering a firestorm of both legitimate and mal-intended claims. During the SEC's rule-making process there were also fears expressed that it would undermine existing compliance and ethics programs by encouraging employees to avoid internal mechanisms for reporting wrongdoing and take allegations straight to the SEC. A leading business group, in its comment letter to the SEC, wrote that the whistleblower provisions "...may undermine the functioning of effective corporate compliance programs by relegating them to the sidelines in the process of identifying and remedying violations of securities laws."

The Society of Corporate Compliance and Ethics and the Health Care Compliance Association jointly fielded a survey to determine the impact, if any, Dodd-Frank has had on compliance and ethics programs. Our goal was to determine if the added incentives for employees to take their claims outside of the company was affecting the structure of compliance programs.

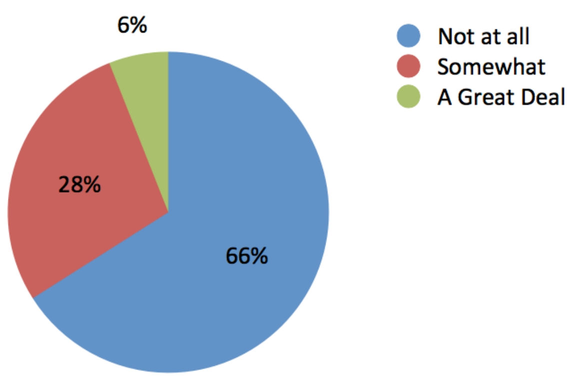
Executive Summary

The survey revealed that relatively little has changed as a result of Dodd-Frank. While companies are increasing communications to employees, the Act's whistleblower provisions have not led to wholesale changes to compliance programs. Instead they have primarily led to what most would likely welcome: increased communications to employees about what to do when encountering wrongdoing and greater training of managers about how to handle reported wrongdoing.

Findings

- **Just 6% of respondents reported that Dodd-Frank had led to a "great deal" of change to their compliance program.** To be sure, there were variations by industry type and company structure. For example, while only 5% of healthcare companies reported their program had changed a great deal, 11% of non-healthcare companies reported this level of change. But on the whole the Act does not seem to have led to wholesale changes. Even among publicly traded companies, which face the greatest risks from Dodd-Frank, only 8% reported that their compliance program had changed "a great deal" as a result of Dodd-Frank, while 46% reported that their program had not changed at all.

To what degree has your organization modified its compliance program as a result of Dodd-Frank?

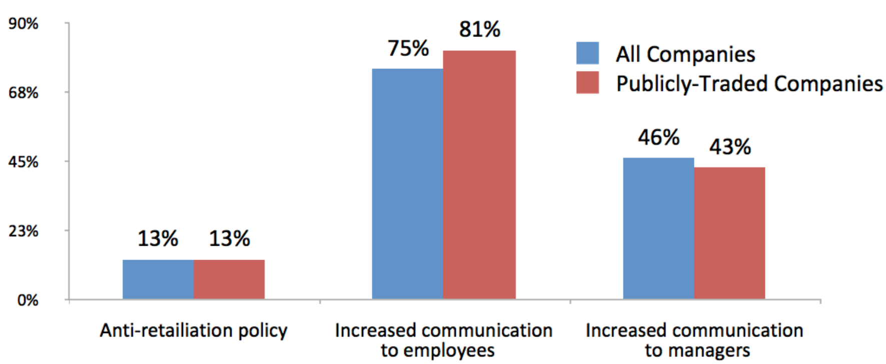


Society of Corporate Compliance and Ethics • corporatecompliance.org

- **One possible explanation for the relative lack of change was that anonymous help lines were already fairly ubiquitous.** Overall 90% of respondents reported that their employer already had an anonymous helpline in place. Among publicly-traded companies 99% reported a helpline already present.

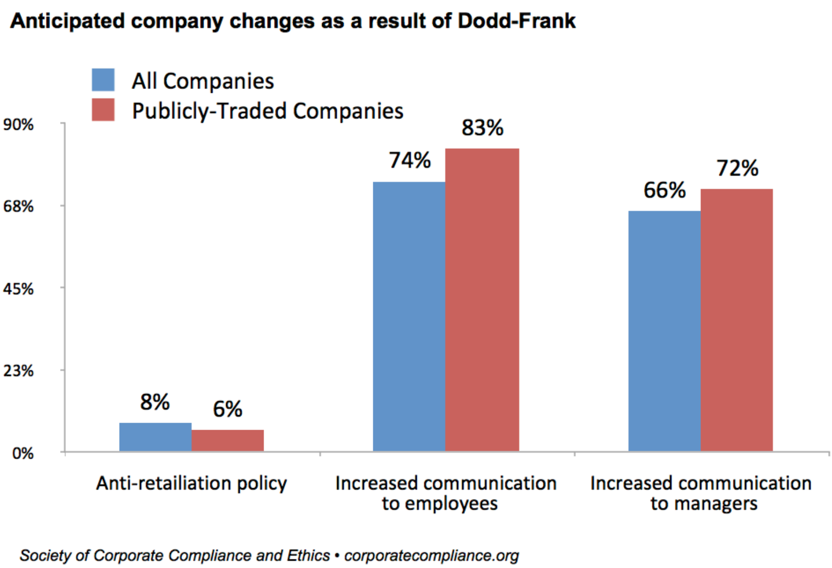
- **Some changes were made, though, as a result of Dodd-Frank.** Anti-retaliation policies were reported changed by 13% of respondents. Increased communication to employees about opportunities to report wrongdoing were reported by 75%; and increased communications to managers about how to handle employee allegations of wrongdoing were reported by 46%.

Percentage of respondents reporting company changes as a result of Dodd-Frank



Society of Corporate Compliance and Ethics • corporatecompliance.org

- **Looking to future changes, companies expect continued efforts in communication.** Increased employee communication is expected by 74% of respondents and by 83% of those at publicly traded firms. Likewise increased manager communication about handling allegations of wrongdoing is expected by 66% overall and 72% of respondents in publicly traded companies.



Conclusions

- **Despite the hue and cry during the rule-making period about the potential impact on compliance programs, the whistleblower provisions of Dodd-Frank do not seem to have had a major impact on the structure of these programs.** The business community had already embraced helplines and likely already had anti-retaliation policies in place. As a result, a wholesale restructuring of compliance programs to maintain their effectiveness does not appear to have been deemed necessary by the business community.

- **The main impact of Dodd-Frank seems to be increased communications about internal opportunities to report wrongdoing.** This is likely a positive development, regardless of the existence of Dodd-Frank. By making employees more aware of the opportunity to report wrongdoing internally, and the organization's eagerness for them to step forward, the business community will likely foster greater willingness of employees to raise their hands internally when they see malfeasance occur.

- **A second positive impact of Dodd-Frank appears to be increased training of managers.** Research conducted in 2009 by the Ethics Resource Center, and co-sponsored by the SCCE, revealed that 46% of reports of perceived wrongdoing went to managers, compared to just 3% to anonymous helplines. With managers receiving such a large portion of allegations of improper behavior it is critical that they understand how to handle those reports properly. Dodd-Frank appears to have accelerated the training process and may end up leading to faster, better handling of allegations.

Methodology

Survey responses were solicited during July and August 2011 from compliance and ethics professionals in the database of the Health Care Compliance Association and the Society of Corporate Compliance and Ethics. Responses were collected and analyzed using Zoomerang, a web-based third-party solution.