Investigator's Desk Aid to the Sarbanes-Oxley Act (SOX) Whistleblower Protection Provision

18 U.S.C. 1514A

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This Desk Aid represents the Occupational Safety and Health Administration's (OSHA) summary of the scope of coverage and protected activity and the procedures for handling investigations under the Sarbanes-Oxley Act as of the "last revised" date below. This guide is intended for OSHA's use and the guidance herein is subject to change at any time. This Desk Aid is informational in content. It is not a standard or regulation, and it neither creates new legal obligations nor alters existing obligations. Furthermore, there may be a delay between the publication of significant decisions or other authority under this statute and modification of the Desk Aid. The Federal Register and the Code of Federal Regulations are the official source for regulatory information published by OSHA. Decisional case law of the Department of Labor's Administrative Review Board is the official source for the views of the Secretary of Labor on the interpretation of the Sarbanes-Oxley Act.

Abbreviations Used in this Desk Aid

CFPA Consumer Financial Protection Act

CFPB	Consumer Financial Protection Bureau
OSHA	Occupational Safety and Health Administration
SOX	Sarbanes-Oxley Act (used in this Desk Aid to refer just to the Sarbanes-Oxley Act's whistleblower protection provision, 18 U.S.C. 1514A)
SEC	Securities and Exchange Commission

I. SOX in a Nutshell

The Sarbanes-Oxley Act of 2002 (SOX) prohibits publicly traded companies and others from discharging or otherwise retaliating against an employee for reporting conduct that the employee reasonably believes constitutes mail, wire, bank, or securities fraud, a violation of any SEC rule or regulation, or a violation of any provision of federal law relating to fraud against shareholders.

SOX was enacted on July 30, 2002, and was amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. SOX protects investors by ensuring corporate responsibility, enhancing public disclosure, and improving the quality and transparency of financial reporting and auditing. The whistleblower provision, codified at 18 U.S.C. 1514A, is intended to protect employees who report fraudulent activity and violations of SEC rules and regulations that can harm innocent investors in publicly traded companies.

OSHA's regulations governing SOX complaints can be found at 29 CFR Part 1980.

A. Covered Entity

SOX prohibits retaliation by:

- Publicly traded companies (i.e., companies with a class of securities registered under section 12 of the Securities Exchange Act of 1934);
- Companies required to file reports under section 15(d) of the Securities Exchange Act of 1934;
- Subsidiaries or affiliates whose financial information is included in the consolidated financial statements of such companies;
- Nationally recognized statistical rating organizations (as defined in 15 U.S.C. 78c(a)(62)); and
- Contractors, subcontractors, agents, officers, and employees of covered companies and nationally recognized statistical rating organizations.

1. Publicly traded companies, i.e., companies with a class of securities registered under Section 12 of the Securities Exchange Act of 1934

Companies with securities registered under section 12 of the Securities Exchange Act of 1934 generally must file one of the following forms each year:

- 10-K (Domestic issuers)

- 20-F (Foreign private[1] issuers)
- 40-F (Canadian private issuers)

These reports can be found on the SEC's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) database (for more information on using EDGAR, see https://www.sec.gov/oiea/Article/edgarguide.html).

2. Companies required to file 15(d) reports

Many companies that do not have securities registered under section 12 are nevertheless required to file reports under section 15(d)—specifically, Form N-CSR, Form N-Q, or Form N-SAR. These reports can be found on EDGAR (https://www.sec.gov/oiea/Article/edgarguide.html).

Common examples of the types of companies required to file 15(d) reports include:

- Investment companies such as mutual funds, unit investment trusts, and Exchange Traded Funds (ETFs)
- Issuers of debt securities.

Certain companies may file section 15(d) reports only under the terms of a loan agreement. OSHA considers these companies to be "voluntary" filers, and thus they are not covered respondents. Therefore, if a respondent shows that it is a voluntary filer pursuant to a loan agreement, there is no coverage under SOX.

3. Subsidiaries of companies registered under Section 12 or required to file 15(d) reports

SOX covers subsidiaries or affiliates whose financial information is included in the consolidated financial statements of a company registered under Section 12 or required to file 15(d) reports. A list of a company's significant consolidated subsidiaries can be found at the end of a covered company's annual filing, available on EDGAR (https://www.sec.gov/oiea/Article/edgarguide.html). Specifically, subsidiaries are listed in:

- Exhibit 21 of a Form 10K;
- Exhibit 8 of a Form 20-F; and
- Additional information from a Form 40-F.

If a subsidiary is not listed on the parent company's annual filings, more information to confirm coverage is often available on the parent company's website or may be obtained from the parties during OSHA's investigation.

[1] For purposes of the 20-F and 40-F report, the term "private" means that these are usually not foreign governments (as in, "not public sector"). However, they are still "publicly traded" companies.

4. Nationally recognized statistical rating organizations

A nationally recognized statistical rating organization (NRSRO) is a credit rating agency that issues credit ratings certified by qualified institutional buyers (15 U.S.C. § 78c(a)(62)). For the complete list of NRSROs, see https://www.sec.gov/ocr/ocr-current-nrsros.html. As of the publication of this Desk Aid, the current NRSROs are:

- A.M. Best Rating Services, Inc.
- DBRS, Inc.
- Egan-Jones Ratings Co.
- Fitch Ratings, Inc.
- HR Ratings de México, S.A. de C.V.
- Japan Credit Rating Agency, Ltd.
- Kroll Bond Rating Agency, Inc.
- Moody's Investors Service, Inc.
- Morningstar Credit Ratings, LLC
- S&P Global Ratings

5. Other covered persons

SOX also prohibits retaliation by the contractors, subcontractors, agents, officers, and employees of covered entities (see sections 1-4 above for information about covered entities).

A contractor, subcontractor, or agent of a covered entity violates SOX if it retaliates against an employee for engaging in SOX-protected conduct, such as reporting conduct that the complainant reasonably believes is securities fraud by or on behalf of the covered company. Whether a respondent is a covered contractor, subcontractor, or agent depends on the facts of the case. For a contractor, subcontractor, or agent to be covered, the protected activity must relate to conduct by or on behalf of the covered entity. Contractors, subcontractors, or agents may include but are not limited to:

- Staffing firms
- Consultants
- Accountants
- Auditors
- Legal services

Officers and employees of the covered entities described in sections 1-4 above may be individually liable for retaliation in violation of SOX. However, the complainant must name these individuals in her/his complaint or make it clear to OSHA that the complainant wants to hold the individuals liable for the retaliation.

6. Protected employees

OSHA's regulations define an employee protected under SOX as an individual presently or formerly working for a covered person, an individual applying to work for a covered person, or an individual whose employment could be affected by a covered person.

The SOX whistleblower provision protects employees for making a disclosure related to their normal job duties. For example, in-house attorneys, accountants, or auditors who disclose a potential violation of one of the categories of law listed in SOX that they learned of as part of their job duties can be protected by the SOX whistleblower provision.

B. Protected Activity

An employee is protected from retaliation if the employee:

1. Provided information, caused information to be provided, or otherwise assisted in an investigation regarding any conduct which the employee reasonably believed to be a violation of: (1) mail, wire, bank, or securities fraud statutes; (2) any SEC rule or regulation; or (3) any provision of Federal law relating to fraud against shareholders; or

2. Filed, caused to be filed, testified, participated in, or otherwise assisted in a proceeding filed or about to be filed relating to an alleged violation of one of the above categories of law.

Complaints to whom?

SOX protects employees who provide information to or assist in an investigation by:

- Supervisors;
- People working for the employer who have authority to investigate, discover, or address misconduct;
- A federal regulatory or law enforcement agency; or
- Any member of Congress or any committee of Congress.

What is a reasonable belief that a violation has occurred?

Whether an employee reasonably believes that there is a violation of law depends on the circumstances and on the employee's education, training, and experience.

SOX requires that a report be about conduct that the complainant reasonably believes constitutes a violation of one of the six categories of law listed in SOX. To have a "reasonable belief," an employee must have a *subjective belief* (i.e., actually believe that a violation has occurred, is occurring, or is likely to occur), *and* the belief must be *objectively reasonable* (i.e., it must be possible that a reasonable person in the employee's position would share this belief).

In determining whether the employee had an objectively reasonable belief, the employee's training, experience, and educational background are relevant. The report need not refer to any law at all, and the employee need not report an *actual* violation of any statute. The report will be protected so long as a reasonable person with the same training and experience could also believe that the relevant activity constitutes a violation. A report based on a reasonable but mistaken belief is protected.

Must a SOX complaint relate to shareholder fraud?

No. To be protected from retaliation, the employee must have provided information regarding conduct that the employee reasonably believed violated any of the categories of law listed in SOX or engaged in protected activity related to a proceeding involving any of the categories of law listed in SOX. Several of those categories—mail fraud, wire fraud, and bank fraud—consist of conduct that is not limited to fraud against shareholders. In addition, a report regarding conduct that the complainant reasonably believed violated an SEC rule or regulation is protected regardless of whether the conduct at issue also directly implicates shareholder fraud.

A SOX complaint does not need to relate to shareholder fraud. It can relate to any of the categories of law listed in SOX.

What form does the employee's report or disclosure need to be in?

Disclosures do not need to be in a specific format to be protected under SOX. Employees can voice their concerns in writing or orally.

How specific does the employee's report or disclosure have to be?

In order to be a protected activity under SOX, a whistleblower's disclosure must be specific enough about the conduct that the employee believes is illegal to allow the respondent to investigate the conduct. However, the employee does not need to point to a particular legal provision that he or she believes is being violated, and there are no "magic words" the complainant has to use to report his or her concerns. Nor does the disclosure need to implicate fraud "definitively and specifically."

Can a report regarding illegal conduct by a client or customer be protected?

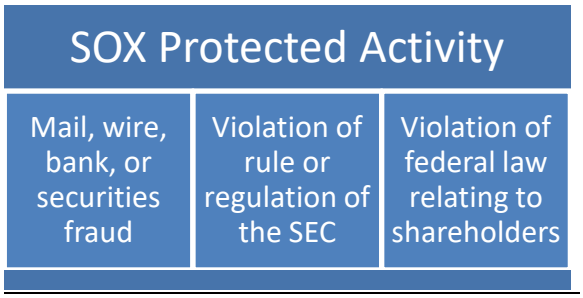
Yes. For example, reports by an employee of a publicly traded investment bank about conduct that the employee reasonably believed indicated wire fraud and money laundering by a client could be protected.

What types of reports are protected?

An employee is protected from retaliation under SOX for making a disclosure regarding conduct that he or she reasonably believes is:

1. Mail, wire, bank, or securities fraud;

2. A violation of SEC rules or regulations; or
3. A violation of any provision of federal law relating to fraud against shareholders.



1. Mail, wire, bank, or securities fraud

SOX protects employees from retaliation for providing information, assisting in investigations, or participating in proceedings related to mail, wire, bank, or securities fraud. Whistleblowers do not need to specifically allege that each of the elements of fraud has occurred to be protected from retaliation under SOX. However, they must have a reasonable belief of a violation. Therefore, for investigative purposes, it is helpful to understand the broad outline of these fraud statutes.

a. Mail fraud

Mail fraud is defined as a 1) scheme to defraud (i.e. an intentional use of false or fraudulent representations to obtain money or something of value) and 2) use of the U.S. mail or any interstate carrier for the purpose of executing that scheme. Reporting conduct that the employee reasonably believes is mail fraud is protected activity under SOX.

> *Example:* An employee of a publicly-traded defense contractor engaged in SOX-protected activity when she reported conduct that she reasonably believed demonstrated that a senior employee was committing mail fraud by using the mail in furtherance of a scheme to defraud the U.S. government (the client) by billing the government for inappropriate expenditures on a "Pen Pal" program between defense contractor employees and U.S. soldiers.

b. Wire fraud

Wire fraud is defined as a scheme to defraud, plus a step taken to further that scheme using communications transmitted by wire or other electronic means. This category is broad and includes fraud by radio, TV, Internet, fax, email, text message, or other electronic means.

> *Example:* An employee of a publicly-traded company engaged in SOX-protected activity when he reported conduct to managers and the employer's ethics hotline that he reasonably believed showed that his work unit was deliberately overbilling clients. The information used to bill clients was transmitted electronically.

c. Bank fraud

Bank fraud is action taken to further a scheme to defraud a financial institution or to obtain any of the monies, funds, credits, assets, securities, or other property owned by, or under the control of, a federally chartered or insured financial institution by means of false or fraudulent pretenses, representations, or promises.

> *Example:* SOX protected a bank teller who worked for a publicly-traded bank from retaliation for reporting to management conduct that he reasonably believed indicated that coworkers in his branch were opening fraudulent depository and credit card accounts without client consent in order to receive financial incentives from the bank that were based on the number of new accounts that employees opened. Note: This conduct could also constitute a reasonable belief of wire fraud since electronic communications were used to open the false accounts. Also, this scenario could implicate the Consumer Financial Protection Act (CFPA) whistleblower protection provision (see pg. 12 for more information on the overlap between SOX and the CFPA).

d. Securities fraud

Securities fraud occurs when a person acts to defraud in connection with the purchase, offer, or sale of a security, where (1) the person committing the fraud made a material misrepresentation or omission, employed a scheme to defraud or engaged in an act or course of practice operating as a fraud or deceit, and (2) the person acted with the intent to deceive, manipulate, or defraud.[2]

> *Example:* SOX protected an in-house attorney employed by a publicly-traded company from retaliation for raising concerns within the company that the benefits of a merger had been misrepresented to shareholders because management had intentionally failed to disclose that one of the key patents that belonged to the company to be acquired was potentially invalid.

> *Example:* SOX protected a broker employed by a publicly-traded company from retaliation for reporting to respondent's management that a coworker had recommended an unsuitable investment to an elderly customer that was inappropriate given his current financial situation and future goals. The customer relied on the representation that the investment was good for him and invested in the unsuitable investment product.

2. Violation of SEC rules or regulations

SOX also protects employees from retaliation for reporting a violation of any SEC rule or regulation (not just the SEC rules or regulations relating to fraud). A non-exhaustive list of some of the most common SEC rule violations alleged in OSHA whistleblower cases includes:

[2] 18 U.S.C. 1348, the securities fraud provision referenced in SOX, also prohibits fraud in connection with any commodity for future delivery, or any option on a commodity for future delivery. Thus, SOX protects a covered employee from retaliation for providing information or participating in an investigation or proceeding regarding conduct that the employee reasonably believes is fraud in connection with commodity futures.

- Deficient internal accounting controls over financial reporting, which are processes designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles (GAAP). SEC rules generally require issuers with securities registered under section 12 or that are required to file 15(d) reports to maintain such controls and to make certain certifications regarding them. Securities Exchange Act Rules 13a-15 and 15d-15, 17 CFR 240.13a-15 and 15d-15.

- Violations of disclosure controls and procedures, which are controls and other procedures designed to ensure that information required to be disclosed in the reports filed or submitted under the Securities Exchange Act is recorded, processed, summarized, and reported within the time periods required by the SEC. SEC rules generally require issuers with securities registered under section 12 or that are required to file 15(d) reports to maintain such controls and to make certain certifications regarding them. Securities Exchange Act Rules 13a-15 and 15d-15, 17 CFR 240.13a-15 and 15d-15.

- SEC rules concerning the failure to keep, or falsification of, books, records, and accounts that accurately and fairly reflect the transactions and dispositions of the assets of the company in reasonable detail. Securities Exchange Act Rules 13b2-1 and 13b2-2; 17 CFR 240.13b2-1 and 13b2-2.

- Violations of Rule 4-01(a)(1) of Regulation S-X, 17 CFR 210.4-01(a)(1) relating to the use of GAAP. Failures to comply with GAAP, the standard guideline for financial accounting may lead to securities law violations. GAAP covers the recording and summarizing of financial transactions.

- Violations of Rule 10b-5, 17 CFR 240.10b-5, which prohibits use of fraudulent, manipulative, or deceptive practices in connection with the purchase or sale of a security. This also includes rules related to insider trading. Rules 10b-5, 10b5-1 and 10b5-2, 17 CFR 240.10b5, 240.10b5-1, and 240.10b5-2.

3. A violation of federal law relating to fraud against shareholders

The final category of protected activity covers disclosures about "a violation of any provision of federal law relating to fraud against shareholders." SOX does not specify which "federal laws" must be violated to qualify as shareholder fraud under this category. Therefore, this category is less well-defined under the statute than the other two categories of protected activity. Some examples of laws that may potentially fit into this category include:

- The SOX whistleblower provision itself. For example, an ethics officer at a publicly traded bank was protected for reporting to management that the bank was retaliating against employees who raised concerns about fraudulent conduct.

- The laws enforced by the SEC, such as the Investment Advisers Act of 1940, the Investment Companies Act of 1940, the Securities Act of 1933, the Securities Exchange

Act of 1934, the Foreign Corrupt Practices Act, the substantive provisions of SOX, and the securities-related provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act. See Attachment 2.

II. Procedures for Handling SOX Complaints

Procedures for handling SOX complaints are set forth in 29 C.F.R. Part 1980. Below is a summary of the procedural provisions most relevant to the OSHA investigation. More information is also available in the What to expect during an OSHA Whistleblower Investigation section of OSHA's website, OSHA's Filing Whistleblower Complaints Under the Sarbanes Oxley Act fact sheet, and the OSHA Whistleblower Investigations Manual.

A. Complaint

Who may file: An employee who believes that he or she has been retaliated against in violation of SOX may file a complaint with OSHA. The employee may also have a representative file on the employee's behalf.

Form: The complaint need not be in any particular form. Oral or written complaints are acceptable, including OSHA's Online Complaint form. If the complainant cannot make a complaint in English, OSHA will accept a complaint in any language.

Timing: The complaint must be filed within 180 days of when the alleged adverse action took place or when the complainant learned of the adverse action. Equitable tolling principles may extend the time for filing in limited circumstances, consistent with the guidance in OSHA's Whistleblower Investigations Manual.

Distribution of complaints and findings to partner agencies: Complaints and findings in SOX cases should be sent to the SEC and the DOJ Civil Frauds section. If the SOX complaint allegations involve laws enforced by the Consumer Financial Protection Bureau (CFPB), complaints and findings should also be sent to the CFPB.

B. Investigation

Upon receiving a complaint, OSHA will evaluate the complaint to determine whether the complaint contains a prima facie allegation of retaliation. In other words, the complaint, supplemented as appropriate with interviews of the complainant, must allege that:

1. The employee engaged in SOX-protected activity;
2. The respondent knew or suspected that the employee engaged in SOX-protected activity;
3. The employee suffered an adverse action;[3] and
4. The circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the adverse action.

[3] An adverse action is an action that might dissuade a reasonable employee from engaging in SOX-protected activity. Examples of adverse actions include (but are not limited to) firing, demoting, denying overtime or a promotion, or disciplining the employee.

If the complaint contains a prima facie allegation of retaliation, OSHA will ask for a position statement from the respondent and proceed with the investigation. If it does not, and the complainant does not agree to administrative closure of the complaint, OSHA will dismiss the complaint with notice to the complainant and the respondent of the right to request a hearing before a Department of Labor administrative law judge (ALJ).

The SOX whistleblower provision uses a "contributing factor" standard. Thus, following the investigation, OSHA will find that retaliation occurred if it determines that there is reasonable cause to believe that SOX-protected activity was a contributing factor in the decision to take adverse action against the complainant and the respondent has not shown by clear and convincing evidence that it would have taken the same action in the absence of the protected activity. A contributing factor is a factor which, alone or with other factors, in any way affects the outcome of a decision.

If OSHA finds reasonable cause to believe that retaliation occurred, it will issue findings and a preliminary order stating the relief to be provided. The relief may include reinstatement, back pay, compensatory damages, other remedies for the retaliation (such as a neutral reference), and reasonable attorney fees and costs.

If OSHA does not find reasonable cause to believe that retaliation occurred, it will issue findings dismissing the complaint.

If the complainant and the respondent agree to settle the case during the investigation, they must submit the settlement agreement for OSHA's review and approval.

C. Administrative and Judicial Review

Either the complainant or the respondent may object to OSHA's findings within 30 days and request a hearing before an ALJ. Filing objections will stay OSHA's order for all relief except reinstatement, which is *not* automatically stayed. If no objections are filed, OSHA's findings become the final order of the Secretary of Labor not subject to review.

The ALJ proceeding is a *de novo*, adversarial proceeding in which both the complainant and the respondent have the opportunity to seek documents and information from each other in discovery and to introduce evidence and testimony into the hearing record. OSHA does not typically participate in the ALJ proceeding. Documents and other information submitted to OSHA during the investigation do not automatically become part of the record in the ALJ proceeding. However, both the complainant and the respondent may introduce evidence that they obtained or used during OSHA's investigation into the ALJ proceeding. The ALJ may hold a hearing or dismiss the case without a hearing if appropriate. Either the complainant or the respondent may appeal the ALJ's decision in the case to the Department of Labor's Administrative Review Board (ARB), which may either accept or reject the case for review. A complainant or respondent may obtain review of an ARB decision or an ALJ decision which the ARB has declined to review by the appropriate U.S. Court of Appeals.

D. Kickout Provision

SOX permits a complainant to bring a *de novo* SOX action in federal district court if the Department of Labor has not reached a final decision on the complainant's SOX claim within 180 days of the filing of the complaint with OSHA and the delay is not due to the bad faith of the complainant.

III. Miscellaneous Issues

A. Extraterritoriality

The application of the SOX whistleblower provision to employees of SOX-covered companies abroad is an evolving area of the law. Investigators should not presume that a complainant is not protected by SOX simply because the complainant was located abroad at the time of the events relevant to the complaint. In some instances, conduct abroad may have a sufficient connection to the United States to fall within SOX's protections.

For example, an employee of a U.S. company who is based in the U.S. and is fired while on a business trip abroad by a supervisor who is also based in the U.S. after raising concerns about violations of U.S. securities laws will not lose the protection of SOX simply because the firing happened to occur on a business trip.

On the other hand, the ARB has found that a Colombian-national employee based in Colombia, who worked for a Colombian subsidiary of a Dutch company and raised concerns to supervisors in Texas that were described primarily in terms of violations of Colombian tax law did not have a sufficient connection to the United States for SOX to apply.

If questions arise regarding whether SOX applies in a particular case to conduct abroad, please contact the Directorate of Whistleblower Protection Programs (DWPP) or the Regional Office of the Solicitor (RSOL).

B. Predispute Arbitration Agreements

The Dodd-Frank Wall Street Reform and Consumer Protection Act amended SOX to generally prohibit predispute agreements to arbitrate SOX claims. The Department of Labor's Administrative Review Board has found that the prohibition is retroactive to agreements entered into prior to 2010. Therefore an arbitration agreement that the complainant and respondent entered into before the adverse action (for example, in the employment agreement between the complainant and the respondent or in the respondent's employee handbook) cannot preclude OSHA from investigating a complainant's SOX claim.

C. Working with the SEC in SOX cases

The SEC can be a helpful resource for OSHA in SOX whistleblower investigations. However, OSHA investigators must bear in mind that it is OSHA's responsibility to determine whether the respondent is covered by SOX, whether the complainant engaged in protected activity, and whether there is reasonable cause to believe that retaliation occurred.

The SEC can offer valuable technical assistance to OSHA by answering questions that can help OSHA make appropriate determinations on coverage and protected activity. For example, the SEC may be able to help determine whether a company has a section 15(d) filing requirement or whether the conduct that a complainant reported implicates a rule or regulation of the SEC. Investigators should route questions about coverage and protected activity to DWPP's SEC liaison, who will help coordinate the inquiry with the proper subject matter expert at the SEC. Before reaching out for SOX technical assistance from the SEC, investigators should exhaust publicly available resources such as EDGAR and/or consult with internal subject matter experts (e.g., supervisors, DWPP, SOL (Office of the Solicitor)), and, in most cases, should solicit information from the parties.

D. Overlap between the SOX and CFPA Whistleblower Protection Provisions

Whistleblower complaints filed under SOX may also allege violations of the whistleblower protection provision of the CFPA, 12 U.S.C. 5567. Under the CFPA whistleblower protection provision, no covered person or service provider may discharge or otherwise retaliate against a covered employee or authorized representative for engaging in any protected activity. A covered employee is any individual performing tasks related to the offering or provision of a consumer financial product or service. CFPA protects covered employees from retaliation for making complaints about potential violations of any law, rule, order, standard, or prohibition enforced by the CFPB. For more information on the CFPA, see the CFPA Desk Aid.

Attachment 1: Resources

Glossary of Securities and Investment Terms

This resource, published by the SEC, provides a glossary of securities and investment terms for consumers:
https://investor.gov/additional-resources/general-resources/glossary

Securities and Exchange Commission

The SEC's website contains summaries and full text of SEC laws and regulations, news about recent SEC enforcement actions and other activities, and other resources: https://www.sec.gov.

Securities Lawyer's Deskbook

This resource provides nicely formatted links to the major SEC-enforced laws and regulations:
https://lawblogs.uc.edu/sld/

EDGAR

The SEC's EDGAR database provides free public access to corporate information, allowing quick research of a company's financial information and operations by reviewing registration statements, prospectuses, and periodic reports (such as reports filed on Forms 10-K and 10-Q). Recent corporate events reported on Form 8-K are also available (for more information on EDGAR, see https://www.sec.gov/oiea/Article/edgarguide.html).

Office of Administrative Law Judges Sarbanes-Oxley Act Case Law Digest

This resource maintained by the Department of Labor's Office of Administrative Law Judges provides summaries of administrative and court decisions under the Sarbanes-Oxley Act whistleblower provision:
https://www.oalj.dol.gov/PUBLIC/WHISTLEBLOWER/REFERENCES/REFERENCE_WORKS/SOX_DIGEST.HTM

Attachment 2: Summary of Securities Laws

Below is a basic description of the laws enforced by the SEC that are most likely to be relevant to SOX whistleblower cases. More information about each of these laws is available at https://www.sec.gov.

Law	Description Adapted from the SEC's website
Securities Act of 1933	The Securities Act of 1933 has two basic objectives: (1) require that investors receive financial and other significant information concerning securities being offered for public sale; and (2) prohibit deceit, misrepresentations, and other fraud in the sale of securities. This Act requires that many securities be registered with the SEC and that issuers of securities disclose certain information in their registration and prospectus.
Securities Exchange Act of 1934	This Act created the SEC and gave it broad authority over all aspects of the securities industry. This includes the power to register, regulate, and oversee brokerage firms, transfer agents, and clearing agencies as well as the nation's securities self-regulatory organizations (SROs), including the various securities exchanges (such as the New York Stock Exchange, the NASDAQ Stock Market, and the Chicago Board of Options) and the Financial Industry Regulatory Authority (FINRA). It also identifies and prohibits certain types of conduct in the markets, such as insider trading, and provides the SEC with disciplinary powers over regulated entities and persons associated with them. The Act also empowers the SEC to require periodic reporting of information by companies with publicly traded securities.
Trust Indenture Act of 1939	This Act applies to debt securities such as bonds, debentures, and notes that are offered for public sale. Even though such securities may be registered under the Securities Act, they may not be offered for sale to the public unless a formal agreement between the issuer of bonds and the bondholder, known as the trust indenture, conforms to the standards of this Act.
Investment Company Act of 1940	This Act regulates the organization of companies, including mutual funds, that engage primarily in investing, reinvesting, and trading in securities, and whose own securities are offered to the investing public. The Act is designed to minimize conflicts of interest that arise in these complex operations. The Act requires these companies to disclose their financial condition and investment policies to investors when stock is initially sold and, subsequently, on a regular basis. The focus of this Act is on disclosure to the investing public of information about the fund and its investment objectives, as well as on investment company structure and operations.
Investment Advisers Act of 1940	This law regulates investment advisers. With certain exceptions, this Act requires that firms or sole practitioners compensated for advising others about securities investments must register with the SEC and conform to regulations designed to protect investors. Since the Act was amended in 1996 and 2010, generally only advisers who have at least $100 million of assets under management or advise a registered investment company must register with the SEC.
Sarbanes-Oxley Act of 2002	This law mandated a number of reforms to enhance corporate responsibility, enhance financial disclosures, and combat corporate and accounting fraud, and created the Public Company Accounting Oversight Board (PCAOB) to oversee the activities of the auditing profession.
Dodd-Frank Wall Street Reform and Consumer Protection Act	Dodd-Frank mandated more than 60 rulemakings by the SEC with the overarching objective to promote the long-term sustainability of the U.S. financial system. Rulemakings included disclosure requirements related to executive compensation, regulations related to credit rating agencies, and the creation of the SEC's whistleblower award program. More information about the SEC's implementation of Dodd-Frank is available at https://www.sec.gov/spotlight/dodd-frank.shtml#.
Foreign Corrupt Practices Act of 1977	This law, which amended the Securities Exchange Act, generally prohibits the payment of bribes to foreign officials to assist in obtaining or retaining business. It also requires securities issuers to maintain accurate books and records and have a system of internal controls sufficient to, among other things, provide reasonable assurances that transactions are executed and assets are accessed and accounted for in accordance with management's authorization. It is enforced by the SEC and the Department of Justice.

Attachment 3: Optional Worksheet: Analyzing SOX Whistleblower Complaints

In order to issue merit findings, answers 1 to 9 must be "yes" and answer 10 must be "no."	Yes	No
Timeliness		
1. Was the complaint filed within 180 days of the alleged adverse action (or tolling applies)?	☐	☐
Coverage (See Desk Aid pp. 2-4)		
2. Is respondent SOX-covered? (check one coverage category) ☐ Company with securities registered under SEA sec. 12 or required to file under sec. 15(d) ☐ Subsidiary or affiliate whose financial information is included in the consolidated financial statements of a company registered under sec. 12 or required to file under sec. 15(d) ☐ Nationally recognized statistical rating organization ☐ Contractor, subcontractor, agent, officer, or employee of any of the above	☐	☐
3. Is complainant an employee within the meaning of SOX?	☐	☐
Protected Activity (See Desk Aid pp. 5-10)		
4. Has complainant (pick at least one): a. Provided information to/caused information to be provided to/otherwise assisted in an investigation by (1) a federal regulatory or law enforcement agency, (2) any member/committee of Congress, or (3) a supervisor (or another person working for the employer who has the authority to investigate/discover/terminate misconduct) regarding conduct that the employee reasonably believes violates federal mail, wire, bank, or securities fraud statutes; SEC rules/regulations; or any provision of federal law relating to fraud against shareholders. b. Filed/cause to be filed/testified/participated in/otherwise assisted in a proceeding filed or about to be filed relating to an alleged violation of any of the categories of law listed in 4a above.	☐	☐
5. For item 4a. does the complainant have a subjective, good faith belief that the conduct complained of violated the law?	☐	☐
6. For item 4a. could a reasonable person with similar training, knowledge, and experience believe that a violation occurred, is occurring, or is likely to occur?	☐	☐
Employer Knowledge		
7. Did respondent know or suspect that complainant engaged in the protected activity? (Remember that knowledge may be imputed to respondent using a cat's paw theory or the small plant doctrine if warranted by the evidence.)	☐	☐
Adverse Action		
8. Did respondent discharge or take other adverse action against the employee? (Adverse action is any action that could dissuade a reasonable employee from engaging in SOX-protected activity. Common examples include firing, demoting, or disciplining the employee.)	☐	☐
Nexus (Contributing Factor)		
9. Was complainant's SOX-protected activity a *contributing factor* in respondent's decision to take adverse action against the complainant? Evidence that protected activity contributed to an adverse action includes, but is not limited to: • Close timing (temporal proximity) between the protected activity and the adverse action. • Evidence of hostility towards the protected activity. • Disparate treatment of complainant compared to other employees following protected activity. • Changes in respondent's treatment of complainant after the protected activity. • Indicators that respondent's stated reasons for the adverse action are pretext.	☐	☐
Affirmative Defense		
10. Is there clear and convincing evidence that respondent would have taken the same action against complainant absent the protected activity?	☐ No	☐ Yes