

117TH CONGRESS
1ST SESSION

S. 2775

To amend the Consumer Financial Protection Act of 2010 to provide for whistleblower incentives and protection.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2021

Ms. CORTEZ MASTO (for herself, Mr. BROWN, Mr. DURBIN, Ms. WARREN, Ms. SMITH, Mr. BLUMENTHAL, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Consumer Financial Protection Act of 2010 to provide for whistleblower incentives and protection.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Financial Compensa-
5 tion for CFPB Whistleblowers Act”.

1 **SEC. 2. BUREAU WHISTLEBLOWER INCENTIVES AND PRO-**
 2 **TECTION.**

3 (a) IN GENERAL.—The Consumer Financial Protec-
 4 tion Act (12 U.S.C. 5481 et seq.) is amended by adding
 5 at the end of section 1017 the following:

6 **“SEC. 1017A. WHISTLEBLOWER INCENTIVES AND PROTEC-**
 7 **TION.**

8 “(a) DEFINITIONS.—In this section:

9 “(1) ADMINISTRATIVE PROCEEDING OR COURT
 10 ACTION.—The term ‘administrative proceeding or
 11 court action’ means any judicial or administrative
 12 action brought by the Bureau that results in mone-
 13 tary sanctions exceeding \$1,000,000.

14 “(2) FUND.—The term ‘Fund’ means the Con-
 15 sumer Financial Civil Penalty Fund established
 16 under section 1017(d)(1).

17 “(3) MONETARY SANCTIONS.—The term ‘mone-
 18 tary sanctions’ means, with respect to any adminis-
 19 trative proceeding or court action, any monies, in-
 20 cluding penalties, disgorgement, restitution, interest,
 21 ordered to be paid or other amounts of relief ob-
 22 tained under section 1055(a)(2).

23 “(4) ORIGINAL INFORMATION.—The term
 24 ‘original information’ means information that—

25 “(A) is derived from the independent
 26 knowledge or analysis of a whistleblower;

1 “(B) is not known to the Bureau from any
2 other source, unless the whistleblower is the
3 original source of the information;

4 “(C) is not exclusively derived from an al-
5 legation made in a judicial or administrative
6 hearing, in a governmental report, hearing, or
7 from the news media, unless the whistleblower
8 is a source of the information; and

9 “(D) is not exclusively derived from an al-
10 legation made in an audit, examination, or in-
11 vestigation.

12 “(5) SUCCESSFUL ENFORCEMENT.—The term
13 ‘successful enforcement’ includes, with respect to
14 any administrative proceeding or court action
15 brought by the Bureau, any settlement of such pro-
16 ceeding or action.

17 “(6) WHISTLEBLOWER.—The term ‘whistle-
18 blower’ means any individual, or 2 or more individ-
19 uals acting jointly, who provides original information
20 relating to a violation of Federal consumer financial
21 law, consistent with any rule or regulation issued by
22 the Bureau under this section.

23 “(b) AWARDS.—

24 “(1) IN GENERAL.—In any administrative pro-
25 ceeding or court action the Bureau, subject to regu-

1 lations prescribed by the Bureau and subject to sub-
 2 section (c), shall pay an award or awards to 1 or
 3 more whistleblowers who voluntarily provided origi-
 4 nal information that led to the successful enforce-
 5 ment of the covered administrative proceeding or
 6 court action in an aggregate amount equal to—

7 “(A) not less than 10 percent, in total, of
 8 the civil money penalties collected by the Bu-
 9 reau in the action; and

10 “(B) not more than 30 percent, in total, of
 11 the civil money penalties collected by the Bu-
 12 reau in the action.

13 “(2) PAYMENT OF AWARDS.—Any amount paid
 14 under paragraph (1) shall be paid from the Fund.

15 “(3) AWARD MINIMUM.—If the Bureau collects
 16 less than \$1,000,000 in civil money penalties in the
 17 action, the Bureau shall provide for an award to any
 18 single whistleblower equal to the greater of—

19 “(A) 10 percent of the civil money pen-
 20 alties collected; or

21 “(B) \$50,000.

22 “(c) DETERMINATION OF AMOUNT OF AWARD; DE-
 23 NIAL OF AWARD.—

24 “(1) DETERMINATION OF AMOUNT OF
 25 AWARD.—

1 “(A) DISCRETION.—The determination of
2 the percentage amount of an award made under
3 subsection (b) shall be in the discretion of the
4 Bureau.

5 “(B) CRITERIA.—In determining the per-
6 centage amount of an award made under sub-
7 section (b), the Bureau shall take into consider-
8 ation—

9 “(i) the significance of the informa-
10 tion provided by the whistleblower to the
11 successful enforcement of the administra-
12 tive proceeding or court action;

13 “(ii) the degree of assistance provided
14 by the whistleblower and any legal rep-
15 resentative of the whistleblower in an ad-
16 ministrative proceeding or court action;

17 “(iii) the programmatic interest of the
18 Bureau in deterring violations of Federal
19 consumer financial law (including applica-
20 ble regulations) by making awards to whis-
21 tleblowers who provide information that
22 leads to the successful enforcement of such
23 laws; and

24 “(iv) such additional relevant factors
25 as the Bureau may establish by rule or

1 regulation, including the amount available
2 in the Fund.

3 “(2) DENIAL OF AWARD.—No award under
4 subsection (b) shall be made—

5 “(A) to any whistleblower who is, or was at
6 the time the whistleblower acquired the original
7 information submitted to the Bureau, a mem-
8 ber, officer, or employee of an entity described
9 in subclauses (I) through (V) of subsection
10 (h)(1)(C)(i);

11 “(B) to any whistleblower who is convicted
12 of a criminal violation related to the adminis-
13 trative proceeding or court action for which the
14 whistleblower otherwise could receive an award
15 under this section;

16 “(C) to any whistleblower who is found to
17 be liable for the conduct in the administrative
18 proceeding or court action, or a related action,
19 for which the whistleblower otherwise could re-
20 ceive an award under this section;

21 “(D) to any whistleblower who planned
22 and initiated the conduct at issue in the admin-
23 istrative proceeding or court action for which
24 the whistleblower otherwise could receive an
25 award under this section;

1 “(E) to any whistleblower who submits in-
2 formation to the Bureau that is based on the
3 facts underlying the administrative proceeding
4 or court action previously submitted by another
5 whistleblower; and

6 “(F) to any whistleblower who fails to sub-
7 mit information to the Bureau in such form as
8 the Bureau may, by rule or regulation, require.

9 “(d) REPRESENTATION.—

10 “(1) PERMITTED REPRESENTATION.—Any
11 whistleblower who makes a claim for an award under
12 subsection (b) may be represented by counsel.

13 “(2) REQUIRED REPRESENTATION.—

14 “(A) IN GENERAL.—Any whistleblower
15 who anonymously makes a claim for an award
16 under subsection (b) shall be represented by
17 counsel if the whistleblower submits the infor-
18 mation upon which the claim is based.

19 “(B) DISCLOSURE OF IDENTITY.—Prior to
20 the payment of an award, a whistleblower shall
21 disclose the identity of the whistleblower and
22 provide such other information as the Bureau
23 may require, directly or through counsel of the
24 whistleblower.

1 “(e) NO CONTRACT NECESSARY.—No contract or
2 other agreement with the Bureau is necessary for any
3 whistleblower to receive an award under subsection (b),
4 unless otherwise required by the Bureau by rule or regula-
5 tion.

6 “(f) APPEALS.—Any determination made under this
7 section, including whether, to whom, or in what amount
8 to make awards, shall be in the discretion of the Bureau.
9 Any such determination, except the determination of the
10 amount of an award if the award was made in accordance
11 with subsection (b), may be appealed to the appropriate
12 court of appeals of the United States not more than 30
13 days after the determination is issued by the Bureau. The
14 court shall review the determination made by the Bureau
15 in accordance with section 706 of title 5.

16 “(g) REPORTS TO CONGRESS.—Not later than De-
17 cember 31 of each year, the Bureau shall transmit to the
18 House Committee on Financial Services and the Senate
19 Committee on Banking, Housing, and Urban Affairs a re-
20 port on the Bureau’s whistleblower award program under
21 this section, including a description of the number of
22 awards granted and the types of cases in which awards
23 were granted during the preceding fiscal year.

24 “(h) PROTECTION OF WHISTLEBLOWERS.—

25 “(1) CONFIDENTIALITY.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraphs (B) and (C), the Bureau and
3 any officer or employee of the Bureau, shall not
4 disclose any information, including information
5 provided by a whistleblower to the Bureau,
6 which could reasonably be expected to reveal
7 the identity of a whistleblower, except in ac-
8 cordance with the provisions of section 552a of
9 title 5, United States Code, unless and until re-
10 quired to be disclosed to a defendant or re-
11 spondent in connection with a public proceeding
12 instituted by the Bureau or any entity described
13 in subparagraph (C). For purposes of section
14 552 of title 5, United States Code, this para-
15 graph shall be considered a statute described in
16 subsection (b)(3)(B) of such section 552.

17 “(B) EFFECT.—Nothing in this paragraph
18 is intended to limit the ability of the Attorney
19 General to present such evidence to a grand
20 jury or to share such evidence with potential
21 witnesses or defendants in the course of an on-
22 going criminal investigation.

23 “(C) AVAILABILITY TO GOVERNMENT
24 AGENCIES.—

1 “(i) IN GENERAL.—Without the loss
2 of its status as confidential in the hands of
3 the Bureau, all information referred to in
4 subparagraph (A) may, in the discretion of
5 the Bureau, when determined by the Bu-
6 reau to be necessary or appropriate, be
7 made available to—

8 “(I) the Department of Justice;

9 “(II) an appropriate department
10 or agency of the Federal Government,
11 acting within the scope of its jurisdic-
12 tion;

13 “(III) a State attorney general in
14 connection with any criminal inves-
15 tigation;

16 “(IV) an appropriate department
17 or agency of any State, acting within
18 the scope of its jurisdiction; and

19 “(V) a foreign regulatory author-
20 ity.

21 “(ii) MAINTENANCE OF INFORMA-
22 TION.—Each of the entities, agencies, or
23 persons described in clause (i) shall main-
24 tain information described in that clause

1 as confidential, in accordance with the re-
2 quirements in subparagraph (A).

3 “(2) RIGHTS RETAINED.—Nothing in this sec-
4 tion shall be deemed to diminish the rights, privi-
5 leges, or remedies of any whistleblower under section
6 1057, any other Federal or State law, or under any
7 collective bargaining agreement.

8 “(i) RULEMAKING AUTHORITY.—The Bureau shall
9 have the authority to issue such rules and regulations as
10 may be necessary or appropriate to implement the provi-
11 sions of this section consistent with the purposes of this
12 section.

13 “(j) ORIGINAL INFORMATION.—Information sub-
14 mitted to the Bureau by a whistleblower in accordance
15 with rules or regulations implementing this section shall
16 not lose its status as original information solely because
17 the whistleblower submitted such information prior to the
18 effective date of such rules or regulations, provided such
19 information was submitted after the date of enactment of
20 this section.

21 “(k) PROVISION OF FALSE INFORMATION.—A whis-
22 tleblower who knowingly and willfully makes any false, fic-
23 titious, or fraudulent statement or representation, or who
24 makes or uses any false writing or document knowing the
25 same to contain any false, fictitious, or fraudulent state-

1 ment or entry, shall not be entitled to an award under
2 this section and shall be subject to prosecution under sec-
3 tion 1001 of title 18, United States Code.

4 “(1) UNENFORCEABILITY OF CERTAIN AGREE-
5 MENTS.—

6 “(1) NO WAIVER OF RIGHTS AND REMEDIES.—
7 Except as provided under paragraph (3), and not-
8 withstanding any other provision of law, the rights
9 and remedies provided for in this section may not be
10 waived by any agreement, policy, form, or condition
11 of employment, including by any predispute arbitra-
12 tion agreement.

13 “(2) NO PREDISPUTE ARBITRATION AGREE-
14 MENTS.—Except as provided under paragraph (3),
15 and notwithstanding any other provision of law, no
16 predispute arbitration agreement shall be valid or
17 enforceable to the extent that it requires arbitration
18 of a dispute arising under this section.

19 “(3) EXCEPTION.—Notwithstanding paragraphs
20 (1) and (2), an arbitration provision in a collective
21 bargaining agreement shall be enforceable as to dis-
22 putes arising under subsection (a)(4), unless the Bu-
23 reau determines, by rule, that such provision is in-
24 consistent with the purposes of this title.”.

1 (b) CONSUMER FINANCIAL CIVIL PENALTY FUND.—
2 Section 1017(d)(2) of the Consumer Financial Protection
3 Act of 2010 (12 U.S.C. 5497(d)(2)) is amended, in the
4 first sentence, by inserting “and for awards authorized
5 under section 1017A” before the period at the end.

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