I

117TH CONGRESS 1ST SESSION H. R. 5484

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

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 5, 2021

Mr. GREEN of Texas introduced the following bill; which was referred to the Committee on Financial Services

A BILL

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

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Financial Compensation for CFPB Whistleblowers Act”.

SEC. 2. BUREAU WHISTLEBLOWER INCENTIVES AND PRO-

TECTION.

(a) IN GENERAL.—The Consumer Financial Protec-

tion Act (12 U.S.C. 5481 et seq.) is amended by adding at the end of section 1017 the following:
"SEC. 1017A. WHISTLEBLOWER INCENTIVES AND PROTECTION.

“(a) DEFINITIONS.—In this section:

“(1) ADMINISTRATIVE PROCEEDING OR COURT ACTION.—The term ‘administrative proceeding or court action’ means any judicial or administrative action brought by the Bureau that results in monetary sanctions greater than or equal to $1,000,000.

“(2) FUND.—The term ‘Fund’ means the Consumer Financial Civil Penalty Fund established under section 1017(d)(1).

“(3) MONETARY SANCTIONS.—The term ‘monetary sanctions’ means, with respect to any administrative proceeding or court action, any monies, including penalties, disgorgement, restitution, damages, interest, ordered to be paid or other amounts of relief obtained under section 1055(a)(2).

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

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

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

“(C) is not exclusively derived from an allegation made in a judicial or administrative
hearing, in a governmental report, hearing, or from the news media, unless the whistleblower is a source of the information; and

“(D) is not exclusively derived from an allegation made in an audit, examination, or investigation.

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

“(6) WHISTLEBLOWER.—The term ‘whistleblower’ means any individual, or 2 or more individuals acting jointly, who provides original information relating to a violation of Federal consumer financial law, consistent with any rule or regulation issued by the Bureau under this section.

“(b) AWARDS.—

“(1) IN GENERAL.—In any administrative proceeding or court action the Bureau, subject to regulations prescribed by the Bureau and subject to subsection (c), shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information that led to the successful enforce-
ment of the covered administrative proceeding or
court action in an aggregate amount equal to—

“(A) not less than 10 percent, in total, of
what has been collected of the monetary sanc-
tions imposed in the action; and

“(B) not more than 30 percent, in total, of
what has been collected of the monetary sanc-
tions imposed in the action.

“(2) Payment of awards.—Any amount paid
under paragraph (1) shall be paid from the Fund.

“(3) Award minimum.—If the Bureau is un-
able to collect at least $1,000,000 of the monetary
sanctions imposed in the action, the Bureau shall
provide for an award to any single whistleblower
equal to the greater of—

“(A) 10 percent of the amount collected; or

“(B) $50,000.

“(c) Determination of amount of award; de-
nial of award.—

“(1) Determination of amount of
award.—

“(A) Discretion.—The determination of
the percentage amount of an award made under
subsection (b) shall be in the discretion of the
Bureau.
“(B) CRITERIA.—In determining the percentage amount of an award made under subsection (b), the Bureau shall take into consideration—

“(i) the significance of the information provided by the whistleblower to the successful enforcement of the administrative proceeding or court action;

“(ii) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in an administrative proceeding or court action;

“(iii) the programmatic interest of the Bureau in deterring violations of Federal consumer financial law (including applicable regulations) by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws; and

“(iv) such additional relevant factors as the Bureau may establish by rule or regulation, including the amount available in the Fund.

“(2) DENIAL OF AWARD.—No award under subsection (b) shall be made—
“(A) to any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the Bureau, a member, officer, or employee of an entity described in subclauses (I) through (V) of subsection (h)(1)(C)(i);

“(B) to any whistleblower who is convicted of a criminal violation related to the administrative proceeding or court action for which the whistleblower otherwise could receive an award under this section;

“(C) to any whistleblower who is found to be liable for the conduct in the administrative proceeding or court action, or a related action, for which the whistleblower otherwise could receive an award under this section;

“(D) to any whistleblower who planned and initiated the conduct at issue in the administrative proceeding or court action for which the whistleblower otherwise could receive an award under this section;

“(E) to any whistleblower who submits information to the Bureau that is based on the facts underlying the administrative proceeding
or court action previously submitted by another whistleblower; and

“(F) to any whistleblower who fails to submit information to the Bureau in such form as the Bureau may, by rule or regulation, require.

“(d) REPRESENTATION.—

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

“(2) REQUIRED REPRESENTATION.—

“(A) IN GENERAL.—Any whistleblower who anonymously makes a claim for an award under subsection (b) shall be represented by counsel if the whistleblower submits the information upon which the claim is based.

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

“(e) NO CONTRACT NECESSARY.—No contract or other agreement with the Bureau is necessary for any whistleblower to receive an award under subsection (b),
unless otherwise required by the Bureau by rule or regulation.

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

“(g) Reports to Congress.—Not later than December 31 of each year, the Bureau shall transmit to the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs a report on the Bureau’s whistleblower award program under this section, including a description of the number of awards granted and the types of cases in which awards were granted during the preceding fiscal year.

“(h) Protection of Whistleblowers.—

“(1) Confidentiality.—

“(A) In general.—Except as provided in subparagraphs (B) and (C), the Bureau and any officer or employee of the Bureau, shall not
disclose any information, including information
provided by a whistleblower to the Bureau, which could reasonably be expected to reveal
the identity of a whistleblower, except in ac-
cordance with the provisions of section 552a of
title 5, United States Code, unless and until re-
quired to be disclosed to a defendant or re-
respondent in connection with a public proceeding
instituted by the Bureau or any entity described
in subparagraph (C). For purposes of section
552 of title 5, United States Code, this para-
graph shall be considered a statute described in
subsection (b)(3)(B) of such section 552.

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

“(C) Availability to Government
Agencies.—

“(i) In general.—Without the loss
of its status as confidential in the hands of
the Bureau, all information referred to in
subparagraph (A) may, in the discretion of
the Bureau, when determined by the Bu-
reau to be necessary or appropriate, be
made available to—

“(I) the Department of Justice;

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

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

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

“(V) a foreign regulatory author-
ity.

“(ii) MAINTENANCE OF INFOR-
MATION.—Each of the entities, agencies, or
persons described in clause (i) shall main-
tain information described in that clause
as confidential, in accordance with the re-
quirements in subparagraph (A).

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

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

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

“(k) PROVISION OF FALSE INFORMATION.—A whis-
tleblower who knowingly and willfully makes any false, fic-
titious, or fraudulent statement or representation, or who
makes or uses any false writing or document knowing the
same to contain any false, fictitious, or fraudulent state-
ment or entry, shall not be entitled to an award under
this section and shall be subject to prosecution under sec-
tion 1001 of title 18, United States Code.

“(l) UNENFORCEABILITY OF CERTAIN AGREE-
MENTS.—
“(1) NO WAIVER OF RIGHTS AND REMEDIES.—Except as provided under paragraph (3), and notwithstanding any other provision of law, the rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.

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

“(3) EXCEPTION.—Notwithstanding paragraphs (1) and (2), an arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under subsection (a)(4), unless the Bureau determines, by rule, that such provision is inconsistent with the purposes of this title.”.

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