

116TH CONGRESS
2D SESSION

S. 3975

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

IN THE SENATE OF THE UNITED STATES

JUNE 17, 2020

Ms. CORTEZ MASTO (for herself, Mr. BROWN, Ms. WARREN, Ms. SMITH, Mr. DURBIN, Mr. MERKLEY, Mr. WYDEN, and Mr. BLUMENTHAL) 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 what has been collected of the monetary sanc-
 9 tions imposed in the action; and

10 “(B) not more than 30 percent, in total, of
 11 what has been collected of the monetary sanc-
 12 tions imposed 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 is un-
 16 able to collect at least \$1,000,000 of the monetary
 17 sanctions imposed in the action, the Bureau shall
 18 provide for an award to any single whistleblower
 19 equal to the greater of—

20 “(A) 10 percent of the amount 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 tlers who provide information that
22 leads to the successful enforcement of such
23 laws; and

1 “(iv) such additional relevant factors
2 as the Bureau may establish by rule or
3 regulation.

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

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

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

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

22 “(D) to any whistleblower who planned
23 and initiated the conduct at issue in the admin-
24 istrative proceeding or court action for which

1 the whistleblower otherwise could receive an
2 award under this section;

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

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

11 “(d) REPRESENTATION.—

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

15 “(2) REQUIRED REPRESENTATION.—

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

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

1 may require, directly or through counsel of the
2 whistleblower.

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

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

18 “(g) REPORTS TO CONGRESS.—Not later than Octo-
19 ber 30 of each year, the Bureau shall transmit to the
20 House Committee on Financial Services and the Senate
21 Committee on Banking, Housing, and Urban Affairs a re-
22 port on the Bureau’s whistleblower award program under
23 this section, including a description of the number of
24 awards granted and the types of cases in which awards
25 were granted during the preceding fiscal year.

1 “(h) PROTECTION OF WHISTLEBLOWERS.—

2 “(1) CONFIDENTIALITY.—

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

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

1 “(C) AVAILABILITY TO GOVERNMENT
2 AGENCIES.—

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

10 “(I) the Department of Justice;

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

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

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

21 “(V) a foreign regulatory author-
22 ity.

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

1 tain information described in that clause
2 as confidential, in accordance with the re-
3 quirements in subparagraph (A).

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

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

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

22 “(k) PROVISION OF FALSE INFORMATION.—A whis-
23 tblewower who knowingly and willfully makes any false, fie-
24 titious, or fraudulent statement or representation, or who
25 makes or uses any false writing or document knowing the

1 same to contain any false, fictitious, or fraudulent state-
2 ment or entry, shall not be entitled to an award under
3 this section and shall be subject to prosecution under sec-
4 tion 1001 of title 18, United States Code.

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

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

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

20 “(3) EXCEPTION.—Notwithstanding paragraphs
21 (1) and (2), an arbitration provision in a collective
22 bargaining agreement shall be enforceable as to dis-
23 putes arising under subsection (a)(4), unless the Bu-
24 reau determines, by rule, that such provision is in-
25 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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