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(Original Signature of Member)

118TH CONGRESS  
1ST SESSION

# H. R.

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

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## IN THE HOUSE OF REPRESENTATIVES

Mr. EMMER introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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# A BILL

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

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 “CFPB Whistleblower  
5 Incentives and Protection Act”.

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

3 (a) IN GENERAL.—The Consumer Financial Protec-  
4 tion Act of 2010 (12 U.S.C. 5481 et seq.) is amended by  
5 inserting after 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’, when used with respect to any ad-  
19 ministrative proceeding or court action means any  
20 monies, including penalties, disgorgement, restitu-  
21 tion, or interest, ordered to be paid or other  
22 amounts of relief obtained 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’, when used with respect to  
14          any administrative proceeding or court action, in-  
15          cludes any settlement of such action.

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

22          “(b) AWARDS.—

23          “(1) IN GENERAL.—In any administrative pro-  
24          ceeding or court action the Bureau, subject to rules  
25          prescribed by the Bureau and subject to subsection

1 (c), shall pay an award or awards to 1 or more whis-  
2 tleblowers who voluntarily provided original informa-  
3 tion that led to the successful enforcement of the ad-  
4 ministrative proceeding or court action in an aggre-  
5 gate amount equal to—

6 “(A) not less than the greater of—

7 “(i) 10 percent, in total, of monetary  
8 sanctions imposed and collected in the ad-  
9 ministrative proceeding or court action; or

10 “(ii) \$50,000; and

11 “(B) not more than 30 percent, in total, of  
12 such monetary sanctions.

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

15 “(3) AWARD MAXIMUM.—Notwithstanding any  
16 other provision in this section, the maximum award  
17 to any single whistleblower is limited to \$5,000,000.

18 “(c) DETERMINATION OF AMOUNT OF AWARD; DE-  
19 TERMINATION OF AWARD.—

20 “(1) DETERMINATION OF AMOUNT OF  
21 AWARD.—

22 “(A) DISCRETION.—The determination of  
23 the percentage amount of an award made under  
24 subsection (b) shall be in the discretion of the  
25 Bureau.

1           “(B) CRITERIA.—In determining the per-  
2           centage amount of an award made under sub-  
3           section (b), the Bureau shall take into consider-  
4           ation—

5                   “(i) the significance of the informa-  
6                   tion provided by the whistleblower to the  
7                   successful enforcement of the administra-  
8                   tive proceeding or court action;

9                   “(ii) the degree of assistance provided  
10                  by the whistleblower and any legal rep-  
11                  resentative of the whistleblower in an ad-  
12                  ministrative proceeding or court action;

13                  “(iii) the programmatic interest of the  
14                  Bureau in deterring violations of Federal  
15                  consumer financial law (including applica-  
16                  ble rules) by making awards to whistle-  
17                  blowers who provide information that leads  
18                  to the successful enforcement of such laws;  
19                  and

20                  “(iv) such additional relevant factors  
21                  as the Bureau may establish by rule.

22           “(2) DENIAL OF AWARD.—No award under  
23           subsection (b) may be made—

24                   “(A) to any whistleblower who is, or was at  
25                   the time the whistleblower acquired the original

1 information submitted to the Bureau, a mem-  
2 ber, officer, or employee of an entity described  
3 in subclauses (I) through (V) of subsection  
4 (h)(1)(C)(i);

5 “(B) to any whistleblower who is convicted  
6 of a criminal violation related to the adminis-  
7 trative proceeding or court action for which the  
8 whistleblower otherwise could receive an award  
9 under this section;

10 “(C) to any whistleblower who is found to  
11 be liable for the conduct in the administrative  
12 proceeding or court action, or a related action,  
13 for which the whistleblower otherwise could re-  
14 ceive an award under this section;

15 “(D) to any whistleblower who planned  
16 and initiated the conduct at issue in the admin-  
17 istrative proceeding or court action for which  
18 the whistleblower otherwise could receive an  
19 award under this section;

20 “(E) to any whistleblower who submits in-  
21 formation to the Bureau that is based on the  
22 facts underlying the administrative proceeding  
23 or court action previously submitted by another  
24 whistleblower;

1           “(F) to any whistleblower who knowingly  
2           and willfully makes any false, fictitious, or  
3           fraudulent statement or representation, or who  
4           makes or uses any false writing or document  
5           knowing the same to contain any false, ficti-  
6           tious, or fraudulent statement or entry; and

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

10       “(d) REPRESENTATION.—

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

14           “(2) REQUIRED REPRESENTATION.—

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

20           “(B) DISCLOSURE OF IDENTITY.—Prior to  
21       the payment of an award, a whistleblower shall  
22       disclose the identity of the whistleblower and  
23       provide such other information as the Bureau  
24       may require, directly or through counsel of the  
25       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.

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

16           “(g) REPORTS TO CONGRESS.—Not later than Octo-  
17 ber 30 of each year, the Bureau shall transmit to the Com-  
18 mittee on Financial Services of the House of Representa-  
19 tives and the Committee on Banking, Housing, and Urban  
20 Affairs of the Senate a report on the Bureau’s whistle-  
21 blower award program under this section, including a de-  
22 scription of the number of awards granted and the types  
23 of cases in which awards were granted during the pre-  
24 ceding fiscal year.

25           “(h) PROTECTION OF WHISTLEBLOWERS.—



1           “(1) CONFIDENTIALITY.—

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

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

24                   “(C) AVAILABILITY TO GOVERNMENT  
25          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 as may be necessary  
10 or appropriate to implement the provisions of this section.

11 “(j) ORIGINAL INFORMATION.—Information sub-  
12 mitted to the Bureau by a whistleblower in accordance  
13 with rules implementing this section shall not lose its sta-  
14 tus as original information solely because the whistle-  
15 blower submitted such information prior to the effective  
16 date of such rules, provided such information was sub-  
17 mitted after the date of enactment of this section.”.

18 (b) CLERICAL AMENDMENT.—The table of contents  
19 under section 1(b) of the Dodd-Frank Wall Street Reform  
20 and Consumer Protection Act is amended by inserting  
21 after the item relating to section 1017 the following:

“Sec. 1017A. Whistleblower incentives and protection.”.

22 **SEC. 3. AMENDMENT TO THE CONSUMER FINANCIAL CIVIL**  
23 **PENALTY FUND.**

24 Section 1017(d)(2) of the Consumer Financial Pro-  
25 tection Act of 2010 (12 U.S.C. 5497(d)(2)) is amended

- 1 by striking “under the Federal consumer financial laws.”
- 2 and inserting “under the Federal consumer financial laws
- 3 and for awards authorized under section 1017A.”.