

1 **SEC. 922. WHISTLEBLOWER PROTECTION.**

2 (a) IN GENERAL.—The Securities Exchange Act of
3 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
4 section 21E the following:

5 **“SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND**
6 **PROTECTION.**

7 “(a) DEFINITIONS.—In this section the following
8 definitions shall apply:

9 “(1) COVERED JUDICIAL OR ADMINISTRATIVE
10 ACTION.—The term ‘covered judicial or administra-
11 tive action’ means any judicial or administrative ac-
12 tion brought by the Commission under the securities
13 laws that results in monetary sanctions exceeding
14 \$1,000,000.

15 “(2) FUND.—The term ‘Fund’ means the Secu-
16 rities and Exchange Commission Investor Protection
17 Fund.

18 “(3) ORIGINAL INFORMATION.—The term
19 ‘original information’ means information that—

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

22 “(B) is not known to the Commission from
23 any other source, unless the whistleblower is the
24 original source of the information; and

25 “(C) is not exclusively derived from an al-
26 legation made in a judicial or administrative

1 hearing, in a governmental report, hearing,
2 audit, or investigation, or from the news media,
3 unless the whistleblower is a source of the infor-
4 mation.

5 “(4) MONETARY SANCTIONS.—The term ‘mone-
6 tary sanctions’, when used with respect to any judi-
7 cial or administrative action, means—

8 “(A) any monies, including penalties,
9 disgorgement, and interest, ordered to be paid;
10 and

11 “(B) any monies deposited into a
12 disgorgement fund or other fund pursuant to
13 section 308(b) of the Sarbanes-Oxley Act of
14 2002 (15 U.S.C. 7246(b)), as a result of such
15 action or any settlement of such action.

16 “(5) RELATED ACTION.—The term ‘related ac-
17 tion’, when used with respect to any judicial or ad-
18 ministrative action brought by the Commission
19 under the securities laws, means any judicial or ad-
20 ministrative action brought by an entity described in
21 subclauses (I) through (IV) of subsection
22 (h)(2)(D)(i) that is based upon the original informa-
23 tion provided by a whistleblower pursuant to sub-
24 section (a) that led to the successful enforcement of
25 the Commission action.

1 “(6) WHISTLEBLOWER.—The term ‘whistle-
2 blower’ means any individual who provides, or 2 or
3 more individuals acting jointly who provide, informa-
4 tion relating to a violation of the securities laws to
5 the Commission, in a manner established, by rule or
6 regulation, by the Commission.

7 “(b) AWARDS.—

8 “(1) IN GENERAL.—In any covered judicial or
9 administrative action, or related action, the Commis-
10 sion, under regulations prescribed by the Commis-
11 sion and subject to subsection (c), shall pay an
12 award or awards to 1 or more whistleblowers who
13 voluntarily provided original information to the
14 Commission that led to the successful enforcement
15 of the covered judicial or administrative action, or
16 related action, in an aggregate amount equal to—

17 “(A) not less than 10 percent, in total, of
18 what has been collected of the monetary sanc-
19 tions imposed in the action or related actions;
20 and

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

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

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1 “(c) DETERMINATION OF AMOUNT OF AWARD; DE-
2 NIAL OF AWARD.—

3 “(1) DETERMINATION OF AMOUNT OF
4 AWARD.—

5 “(A) DISCRETION.—The determination of
6 the amount of an award made under subsection
7 (b) shall be in the discretion of the Commission.

8 “(B) CRITERIA.—In determining the
9 amount of an award made under subsection (b),
10 the Commission—

11 “(i) shall take into consideration—

12 “(I) the significance of the infor-
13 mation provided by the whistleblower
14 to the success of the covered judicial
15 or administrative action;

16 “(II) the degree of assistance
17 provided by the whistleblower and any
18 legal representative of the whistle-
19 blower in a covered judicial or admin-
20 istrative action;

21 “(III) the programmatic interest
22 of the Commission in deterring viola-
23 tions of the securities laws by making
24 awards to whistleblowers who provide

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1 information that lead to the successful
2 enforcement of such laws; and

3 “(IV) such additional relevant
4 factors as the Commission may estab-
5 lish by rule or regulation; and

6 “(ii) shall not take into consideration
7 the balance of the Fund.

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

10 “(A) to any whistleblower who is, or was at
11 the time the whistleblower acquired the original
12 information submitted to the Commission, a
13 member, officer, or employee of—

14 “(i) an appropriate regulatory agency;

15 “(ii) the Department of Justice;

16 “(iii) a self-regulatory organization;

17 “(iv) the Public Company Accounting
18 Oversight Board; or

19 “(v) a law enforcement organization;

20 “(B) to any whistleblower who is convicted
21 of a criminal violation related to the judicial or
22 administrative action for which the whistle-
23 blower otherwise could receive an award under
24 this section;

1 “(C) to any whistleblower who gains the
2 information through the performance of an
3 audit of financial statements required under the
4 securities laws and for whom such submission
5 would be contrary to the requirements of sec-
6 tion 10A of the Securities Exchange Act of
7 1934 (15 U.S.C. 78j-1); or

8 “(D) to any whistleblower who fails to sub-
9 mit information to the Commission in such
10 form as the Commission may, by rule, 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 anonymously sub-
20 mits the information upon which the claim is
21 based.

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

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

3 “(e) NO CONTRACT NECESSARY.—No contract with
4 the Commission is necessary for any whistleblower to re-
5 ceive an award under subsection (b), unless otherwise re-
6 quired by the Commission by rule or regulation.

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

18 “(g) INVESTOR PROTECTION FUND.—

19 “(1) FUND ESTABLISHED.—There is estab-
20 lished in the Treasury of the United States a fund
21 to be known as the ‘Securities and Exchange Com-
22 mission Investor Protection Fund’.

23 “(2) USE OF FUND.—The Fund shall be avail-
24 able to the Commission, without further appropria-
25 tion or fiscal year limitation, for—

1 “(A) paying awards to whistleblowers as
2 provided in subsection (b); and

3 “(B) funding the activities of the Inspector
4 General of the Commission under section 4(i).

5 “(3) DEPOSITS AND CREDITS.—

6 “(A) IN GENERAL.—There shall be depos-
7 ited into or credited to the Fund an amount
8 equal to—

9 “(i) any monetary sanction collected
10 by the Commission in any judicial or ad-
11 ministrative action brought by the Com-
12 mission under the securities laws that is
13 not added to a disgorgement fund or other
14 fund under section 308 of the Sarbanes-
15 Oxley Act of 2002 (15 U.S.C. 7246) or
16 otherwise distributed to victims of a viola-
17 tion of the securities laws, or the rules and
18 regulations thereunder, underlying such ac-
19 tion, unless the balance of the Fund at the
20 time the monetary sanction is collected ex-
21 ceeds \$300,000,000;

22 “(ii) any monetary sanction added to
23 a disgorgement fund or other fund under
24 section 308 of the Sarbanes-Oxley Act of
25 2002 (15 U.S.C. 7246) that is not distrib-

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1 uted to the victims for whom the Fund was
2 established, unless the balance of the
3 disgorgement fund at the time the deter-
4 mination is made not to distribute the
5 monetary sanction to such victims exceeds
6 \$200,000,000; and

7 “(iii) all income from investments
8 made under paragraph (4).

9 “(B) ADDITIONAL AMOUNTS.—If the
10 amounts deposited into or credited to the Fund
11 under subparagraph (A) are not sufficient to
12 satisfy an award made under subsection (b),
13 there shall be deposited into or credited to the
14 Fund an amount equal to the unsatisfied por-
15 tion of the award from any monetary sanction
16 collected by the Commission in the covered judi-
17 cial or administrative action on which the
18 award is based.

19 “(4) INVESTMENTS.—

20 “(A) AMOUNTS IN FUND MAY BE IN-
21 VESTED.—The Commission may request the
22 Secretary of the Treasury to invest the portion
23 of the Fund that is not, in the discretion of the
24 Commission, required to meet the current needs
25 of the Fund.

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1 “(B) ELIGIBLE INVESTMENTS.—Invest-
2 ments shall be made by the Secretary of the
3 Treasury in obligations of the United States or
4 obligations that are guaranteed as to principal
5 and interest by the United States, with matu-
6 rities suitable to the needs of the Fund as de-
7 termined by the Commission on the record.

8 “(C) INTEREST AND PROCEEDS CRED-
9 ITED.—The interest on, and the proceeds from
10 the sale or redemption of, any obligations held
11 in the Fund shall be credited to the Fund.

12 “(5) REPORTS TO CONGRESS.—Not later than
13 October 30 of each fiscal year beginning after the
14 date of enactment of this subsection, the Commis-
15 sion shall submit to the Committee on Banking,
16 Housing, and Urban Affairs of the Senate, and the
17 Committee on Financial Services of the House of
18 Representatives a report on—

19 “(A) the whistleblower award program, es-
20 tablished under this section, including—

21 “(i) a description of the number of
22 awards granted; and

23 “(ii) the types of cases in which
24 awards were granted during the preceding
25 fiscal year;

1 “(B) the balance of the Fund at the begin-
2 ning of the preceding fiscal year;

3 “(C) the amounts deposited into or cred-
4 ited to the Fund during the preceding fiscal
5 year;

6 “(D) the amount of earnings on invest-
7 ments made under paragraph (4) during the
8 preceding fiscal year;

9 “(E) the amount paid from the Fund dur-
10 ing the preceding fiscal year to whistleblowers
11 pursuant to subsection (b);

12 “(F) the balance of the Fund at the end
13 of the preceding fiscal year; and

14 “(G) a complete set of audited financial
15 statements, including—

16 “(i) a balance sheet;

17 “(ii) income statement; and

18 “(iii) cash flow analysis.

19 “(h) PROTECTION OF WHISTLEBLOWERS.—

20 “(1) PROHIBITION AGAINST RETALIATION.—

21 “(A) IN GENERAL.—No employer may dis-
22 charge, demote, suspend, threaten, harass, di-
23 rectly or indirectly, or in any other manner dis-
24 criminate against, a whistleblower in the terms

1 section in the appropriate district court of
2 the United States for the relief provided in
3 subparagraph (C).

4 “(ii) SUBPOENAS.—A subpoena re-
5 quiring the attendance of a witness at a
6 trial or hearing conducted under this sec-
7 tion may be served at any place in the
8 United States.

9 “(iii) STATUTE OF LIMITATIONS.—

10 “(I) IN GENERAL.—An action
11 under this subsection may not be
12 brought—

13 “(aa) more than 6 years
14 after the date on which the viola-
15 tion of subparagraph (A) oc-
16 curred; or

17 “(bb) more than 3 years
18 after the date when facts mate-
19 rial to the right of action are
20 known or reasonably should have
21 been known by the employee al-
22 leging a violation of subpara-
23 graph (A).

24 “(II) REQUIRED ACTION WITHIN
25 10 YEARS.—Notwithstanding sub-

1 clause (I), an action under this sub-
2 section may not in any circumstance
3 be brought more than 10 years after
4 the date on which the violation occurs.

5 “(C) RELIEF.—Relief for an individual
6 prevailing in an action brought under subpara-
7 graph (B) shall include—

8 “(i) reinstatement with the same se-
9 niority status that the individual would
10 have had, but for the discrimination;

11 “(ii) 2 times the amount of back pay
12 otherwise owed to the individual, with in-
13 terest; and

14 “(iii) compensation for litigation
15 costs, expert witness fees, and reasonable
16 attorneys’ fees.

17 “(2) CONFIDENTIALITY.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraphs (B) and (C), the Commission
20 and any officer or employee of the Commission
21 shall not disclose any information, including in-
22 formation provided by a whistleblower to the
23 Commission, which could reasonably be ex-
24 pected to reveal the identity of a whistleblower,
25 except in accordance with the provisions of sec-

1 tion 552a of title 5, United States Code, unless
2 and until required to be disclosed to a defend-
3 ant or respondent in connection with a public
4 proceeding instituted by the Commission or any
5 entity described in subparagraph (C). For pur-
6 poses of section 552 of title 5, United States
7 Code, this paragraph shall be considered a stat-
8 ute described in subsection (b)(3)(B) of such
9 section.

10 “(B) EXEMPTED STATUTE.—For purposes
11 of section 552 of title 5, United States Code,
12 this paragraph shall be considered a statute de-
13 scribed in subsection (b)(3)(B) of such section
14 552.

15 “(C) RULE OF CONSTRUCTION.—Nothing
16 in this section is intended to limit, or shall be
17 construed to limit, the ability of the Attorney
18 General to present such evidence to a grand
19 jury or to share such evidence with potential
20 witnesses or defendants in the course of an on-
21 going criminal investigation.

22 “(D) AVAILABILITY TO GOVERNMENT
23 AGENCIES.—

24 “(i) IN GENERAL.—Without the loss
25 of its status as confidential in the hands of

1 the Commission, all information referred to
2 in subparagraph (A) may, in the discretion
3 of the Commission, when determined by
4 the Commission to be necessary to accom-
5 plish the purposes of this Act and to pro-
6 tect investors, be made available to—

7 “(I) the Attorney General of the
8 United States;

9 “(II) an appropriate regulatory
10 authority;

11 “(III) a self-regulatory organiza-
12 tion;

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

16 “(V) any appropriate State regu-
17 latory authority;

18 “(VI) the Public Company Ac-
19 counting Oversight Board;

20 “(VII) a foreign securities au-
21 thority; and

22 “(VIII) a foreign law enforce-
23 ment authority.

24 “(ii) CONFIDENTIALITY.—

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1 “(I) IN GENERAL.—Each of the
2 entities described in subclauses (I)
3 through (VI) of clause (i) shall main-
4 tain such information as confidential
5 in accordance with the requirements
6 established under subparagraph (A).

7 “(II) FOREIGN AUTHORITIES.—
8 Each of the entities described in sub-
9 clauses (VII) and (VIII) of clause (i)
10 shall maintain such information in ac-
11 cordance with such assurances of con-
12 fidentiality as the Commission deter-
13 mines appropriate.

14 “(3) RIGHTS RETAINED.—Nothing in this sec-
15 tion shall be deemed to diminish the rights, privi-
16 leges, or remedies of any whistleblower under any
17 Federal or State law, or under any collective bar-
18 gaining agreement.

19 “(i) PROVISION OF FALSE INFORMATION.—A whis-
20 tler shall not be entitled to an award under this sec-
21 tion if the whistleblower—

22 “(1) knowingly and willfully makes any false,
23 fictitious, or fraudulent statement or representation;
24 or

1 “(2) uses any false writing or document know-
2 ing the writing or document contains any false, ficti-
3 tious, or fraudulent statement or entry.

4 “(j) RULEMAKING AUTHORITY.—The Commission
5 shall have the authority to issue such rules and regulations
6 as may be necessary or appropriate to implement the pro-
7 visions of this section consistent with the purposes of this
8 section.”.

9 (b) PROTECTION FOR EMPLOYEES OF NATIONALLY
10 RECOGNIZED STATISTICAL RATING ORGANIZATIONS.—
11 Section 1514A(a) of title 18, United States Code, is
12 amended—

13 (1) by inserting “or nationally recognized sta-
14 tistical rating organization (as defined in section
15 3(a) of the Securities Exchange Act of 1934 (15
16 U.S.C. 78c),” after “78o(d),”; and

17 (2) by inserting “or nationally recognized sta-
18 tistical rating organization” after “such company”.

19 (c) SECTION 1514A OF TITLE 18, UNITED STATES
20 CODE.—

21 (1) STATUTE OF LIMITATIONS; JURY TRIAL.—
22 Section 1514A(b)(2) of title 18, United States Code,
23 is amended—

24 (A) in subparagraph (D)—

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1 (i) by striking “90” and inserting
2 “180”; and

3 (ii) by striking the period at the end
4 and inserting “, or after the date on which
5 the employee became aware of the viola-
6 tion.”; and

7 (B) by adding at the end the following:

8 “(E) JURY TRIAL.—A party to an action
9 brought under paragraph (1)(B) shall be enti-
10 tled to trial by jury.”.

11 (2) PRIVATE SECURITIES LITIGATION WIT-
12 NESSES; NONENFORCEABILITY; INFORMATION.—Sec-
13 tion 1514A of title 18, United States Code, is
14 amended by adding at the end the following:

15 “(e) NONENFORCEABILITY OF CERTAIN PROVISIONS
16 WAIVING RIGHTS AND REMEDIES OR REQUIRING ARBI-
17 TRATION OF DISPUTES.—

18 “(1) WAIVER OF RIGHTS AND REMEDIES.—The
19 rights and remedies provided for in this section may
20 not be waived by any agreement, policy form, or con-
21 dition of employment, including by a predispute ar-
22 bitration agreement.

23 “(2) PREDISPUTE ARBITRATION AGREE-
24 MENTS.—No predispute arbitration agreement shall

1 be valid or enforceable, if the agreement requires ar-
2 bitration of a dispute arising under this section.”.

3 (d) STUDY OF WHISTLEBLOWER PROTECTION PRO-
4 GRAM.—

5 (1) STUDY.—The Inspector General of the
6 Commission shall conduct a study of the whistle-
7 blower protections established under the amend-
8 ments made by this section, including—

9 (A) whether the final rules and regulation
10 issued under the amendments made by this sec-
11 tion have made the whistleblower protection
12 program (referred to in this subsection as the
13 “program”) clearly defined and user-friendly;

14 (B) whether the program is promoted on
15 the website of the Commission and has been
16 widely publicized;

17 (C) whether the Commission is prompt
18 in—

19 (i) responding to—

20 (I) information provided by whis-
21 tleblowers; and

22 (II) applications for awards filed
23 by whistleblowers;

24 (ii) updating whistleblowers about the
25 status of their applications; and

1 (iii) otherwise communicating with the
2 interested parties;

3 (D) whether the minimum and maximum
4 reward levels are adequate to entice whistle-
5 blowers to come forward with information and
6 whether the reward levels are so high as to en-
7 courage illegitimate whistleblower claims;

8 (E) whether the appeals process has been
9 unduly burdensome for the Commission;

10 (F) whether the funding mechanism for
11 the Investor Protection Fund is adequate;

12 (G) whether, in the interest of protecting
13 investors and identifying and preventing fraud,
14 it would be useful for Congress to consider em-
15 powering whistleblowers or other individuals,
16 who have already attempted to pursue the case
17 through the Commission, to have a private right
18 of action to bring suit based on the facts of the
19 same case, on behalf of the Government and
20 themselves, against persons who have com-
21 mittee securities fraud;

22 (H)(i) whether the exemption under sec-
23 tion 552(b)(3) of title 5 (known as the Freedom
24 of Information Act) established in section
25 21F(h)(2)(A) of the Securities Exchange Act of

1 1934, as added by this Act, aids whistleblowers
2 in disclosing information to the Commission;

3 (ii) what impact the exemption described
4 in clause (i) has had on the ability of the public
5 to access information about the regulation and
6 enforcement by the Commission of securities;
7 and

8 (iii) any recommendations on whether the
9 exemption described in clause (i) should remain
10 in effect; and

11 (I) such other matters as the Inspector
12 General deems appropriate.

13 (2) REPORT.—Not later than 30 months after
14 the date of enactment of this Act, the Inspector
15 General shall—

16 (A) submit a report on the findings of the
17 study required under paragraph (1) to the
18 Committee on Banking, Housing, and Urban
19 Affairs of the Senate and the Committee on Fi-
20 nancial Services of the House; and

21 (B) make the report described in subpara-
22 graph (A) available to the public through publi-
23 cation of the report on the website of the Com-
24 mission.