

**Whistleblower Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R.
4173, 111th Cong. (2010)**

Table of Contents

Section 748 Commodity Whistleblower Incentives and Protection.....	2
Section 922 Whistleblower Protection.....	22
Section 923 Conforming Amendments for Whistleblower Protection	44
Section 924 Implementation and Transition Provisions for Whistleblower Protection.....	45
Section 929A Protection for Employees of Subsidiaries and Affiliates of Publicly Traded Companies ..	47
Section 1057 Employee Protection.....	48
Section 1079B Financial Fraud Protections	62

1 “(B) demonstrates intentional or reckless
2 disregard for the orderly execution of trans-
3 actions during the closing period; or

4 “(C) is, is of the character of, or is com-
5 monly known to the trade as, ‘spoofing’ (bid-
6 ding or offering with the intent to cancel the
7 bid or offer before execution).

8 “(6) RULEMAKING AUTHORITY.—The Commis-
9 sion may make and promulgate such rules and regu-
10 lations as, in the judgment of the Commission, are
11 reasonably necessary to prohibit the trading prac-
12 tices described in paragraph (5) and any other trad-
13 ing practice that is disruptive of fair and equitable
14 trading.

15 “(7) USE OF SWAPS TO DEFRAUD.—It shall be
16 unlawful for any person to enter into a swap know-
17 ing, or acting in reckless disregard of the fact, that
18 its counterparty will use the swap as part of a de-
19 vice, scheme, or artifice to defraud any third
20 party.”.

21 **SEC. 748. COMMODITY WHISTLEBLOWER INCENTIVES AND**
22 **PROTECTION.**

23 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
24 is amended by adding at the end the following:

1 **“SEC. 23. COMMODITY WHISTLEBLOWER INCENTIVES AND**
2 **PROTECTION.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) COVERED JUDICIAL OR ADMINISTRATIVE
5 ACTION.—The term ‘covered judicial or administra-
6 tive action’ means any judicial or administrative ac-
7 tion brought by the Commission under this Act that
8 results in monetary sanctions exceeding \$1,000,000.

9 “(2) FUND.—The term ‘Fund’ means the Com-
10 modity Futures Trading Commission Customer Pro-
11 tection Fund established under subsection (g).

12 “(3) MONETARY SANCTIONS.—The term ‘mone-
13 tary sanctions’, when used with respect to any judi-
14 cial or administrative action means—

15 “(A) any monies, including penalties,
16 disgorgement, restitution, and interest ordered
17 to be paid; and

18 “(B) any monies deposited into a
19 disgorgement fund or other fund pursuant to
20 section 308(b) of the Sarbanes-Oxley Act of
21 2002 (15 U.S.C. 7246(b)), as a result of such
22 action or any settlement of such action.

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 Commission from
2 any other source, unless the whistleblower is the
3 original source of the information; and

4 “(C) is not exclusively derived from an al-
5 legation made in a judicial or administrative
6 hearing, in a governmental report, hearing,
7 audit, or investigation, or from the news media,
8 unless the whistleblower is a source of the infor-
9 mation.

10 “(5) RELATED ACTION.—The term ‘related ac-
11 tion’, when used with respect to any judicial or ad-
12 ministrative action brought by the Commission
13 under this Act, means any judicial or administrative
14 action brought by an entity described in subclauses
15 (I) through (VI) of subsection (h)(2)(C) that is
16 based upon the original information provided by a
17 whistleblower pursuant to subsection (a) that led to
18 the successful enforcement of the Commission ac-
19 tion.

20 “(6) SUCCESSFUL RESOLUTION.—The term
21 ‘successful resolution’, when used with respect to
22 any judicial or administrative action brought by the
23 Commission under this Act, includes any settlement
24 of such action.

1 “(7) WHISTLEBLOWER.—The term ‘whistle-
2 blower’ means any individual, or 2 or more individ-
3 uals acting jointly, who provides information relating
4 to a violation of this Act to the Commission, in a
5 manner established by rule or regulation by the
6 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.

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 Act (including regulations
24 under the Act) by making awards to
25 whistleblowers who provide informa-

1 tion that leads to the successful en-
2 forcement 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) a appropriate regulatory agency;

15 “(ii) the Department of Justice;

16 “(iii) a registered entity;

17 “(iv) a registered futures association;

18 “(v) a self-regulatory organization as
19 defined in section 3(a) of the Securities
20 Exchange Act of 1934 (15 U.S.C. 78c(a));

21 or

22 “(vi) a law enforcement organization;

23 “(B) to any whistleblower who is convicted
24 of a criminal violation related to the judicial or
25 administrative action for which the whistle-

1 blower otherwise could receive an award under
2 this section;

3 “(C) to any whistleblower who submits in-
4 formation to the Commission that is based on
5 the facts underlying the covered action sub-
6 mitted previously by another whistleblower;

7 “(D) to any whistleblower who fails to sub-
8 mit information to the Commission in such
9 form as the Commission may, by rule or regula-
10 tion, 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 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.—

8 “(1) IN GENERAL.—Any determination made
9 under this section, including whether, to whom, or in
10 what amount to make awards, shall be in the discre-
11 tion of the Commission.

12 “(2) APPEALS.—Any determination described
13 in paragraph (1) may be appealed to the appropriate
14 court of appeals of the United States not more than
15 30 days after the determination is issued by the
16 Commission.

17 “(3) REVIEW.—The court shall review the de-
18 termination made by the Commission in accordance
19 with section 7064 of title 5, United States Code.

20 “(g) COMMODITY FUTURES TRADING COMMISSION
21 CUSTOMER PROTECTION FUND.—

22 “(1) ESTABLISHMENT.—There is established in
23 the Treasury of the United States a revolving fund
24 to be known as the ‘Commodity Futures Trading
25 Commission Customer Protection Fund’.

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

4 “(A) the payment of awards to whistle-
5 blowers as provided in subsection (a); and

6 “(B) the funding of customer education
7 initiatives designed to help customers protect
8 themselves against fraud or other violations of
9 this Act, or the rules and regulations there-
10 under.

11 “(3) DEPOSITS AND CREDITS.—There shall be
12 deposited into or credited to the Fund:

13 “(A) MONETARY SANCTIONS.—Any mone-
14 etary sanctions collected by the Commission in
15 any covered judicial or administrative action
16 that is not otherwise distributed to victims of a
17 violation of this Act or the rules and regulations
18 thereunder underlying such action, unless the
19 balance of the Fund at the time the monetary
20 judgment is collected exceeds \$100,000,000.

21 “(B) ADDITIONAL AMOUNTS.—If the
22 amounts deposited into or credited to the Fund
23 under subparagraph (A) are not sufficient to
24 satisfy an award made under subsection (b),
25 there shall be deposited into or credited to the

1 Fund an amount equal to the unsatisfied por-
2 tion of the award from any monetary sanction
3 collected by the Commission in any judicial or
4 administrative action brought by the Commis-
5 sion under this Act that is based on information
6 provided by a whistleblower.

7 “(C) INVESTMENT INCOME.—All income
8 from investments made under paragraph (4).

9 “(4) INVESTMENTS.—

10 “(A) AMOUNTS IN FUND MAY BE IN-
11 VESTED.—The Commission may request the
12 Secretary of the Treasury to invest the portion
13 of the Fund that is not, in the Commission’s
14 judgment, required to meet the current needs of
15 the Fund.

16 “(B) ELIGIBLE INVESTMENTS.—Invest-
17 ments shall be made by the Secretary of the
18 Treasury in obligations of the United States or
19 obligations that are guaranteed as to principal
20 and interest by the United States, with matu-
21 rities suitable to the needs of the Fund as de-
22 termined by the Commission.

23 “(C) INTEREST AND PROCEEDS CRED-
24 ITED.—The interest on, and the proceeds from
25 the sale or redemption of, any obligations held

1 in the Fund shall be credited to, and form a
2 part of, the Fund.

3 “(5) REPORTS TO CONGRESS.—Not later than
4 October 30 of each year, the Commission shall
5 transmit to the Committee on Agriculture, Nutri-
6 tion, and Forestry of the Senate, and the Committee
7 on Agriculture of the House of Representatives a re-
8 port on—

9 “(A) the Commission’s whistleblower
10 award program under this section, including a
11 description of the number of awards granted
12 and the types of cases in which awards were
13 granted during the preceding fiscal year;

14 “(B) customer education initiatives de-
15 scribed in paragraph (2)(B) that were funded
16 by the Fund during the preceding fiscal year;

17 “(C) the balance of the Fund at the begin-
18 ning of the preceding fiscal year;

19 “(D) the amounts deposited into or cred-
20 ited to the Fund during the preceding fiscal
21 year;

22 “(E) the amount of earnings on invest-
23 ments of amounts in the Fund during the pre-
24 ceding fiscal year;

1000

1 “(F) the amount paid from the Fund dur-
2 ing the preceding fiscal year to whistleblowers
3 pursuant to subsection (b);

4 “(G) the amount paid from the Fund dur-
5 ing the preceding fiscal year for customer edu-
6 cation initiatives described in paragraph (2)(B);

7 “(H) the balance of the Fund at the end
8 of the preceding fiscal year; and

9 “(I) a complete set of audited financial
10 statements, including a balance sheet, income
11 statement, and cash flow analysis.

12 “(h) PROTECTION OF WHISTLEBLOWERS.—

13 “(1) PROHIBITION AGAINST RETALIATION.—

14 “(A) IN GENERAL.—No employer may dis-
15 charge, demote, suspend, threaten, harass, di-
16 rectly or indirectly, or in any other manner dis-
17 criminate against, a whistleblower in the terms
18 and conditions of employment because of any
19 lawful act done by the whistleblower—

20 “(i) in providing information to the
21 Commission in accordance with subsection
22 (b); or

23 “(ii) in assisting in any investigation
24 or judicial or administrative action of the

1001

1 Commission based upon or related to such
2 information.

3 “(B) ENFORCEMENT.—

4 “(i) CAUSE OF ACTION.—An indi-
5 vidual who alleges discharge or other dis-
6 crimination in violation of subparagraph
7 (A) may bring an action under this sub-
8 section in the appropriate district court of
9 the United States for the relief provided in
10 subparagraph (C), unless the individual
11 who is alleging discharge or other discrimi-
12 nation in violation of subparagraph (A) is
13 an employee of the Federal Government, in
14 which case the individual shall only bring
15 an action under section 1221 of title 5,
16 United States Code.

17 “(ii) SUBPOENAS.—A subpoena re-
18 quiring the attendance of a witness at a
19 trial or hearing conducted under this sub-
20 section may be served at any place in the
21 United States.

22 “(iii) STATUTE OF LIMITATIONS.—An
23 action under this subsection may not be
24 brought more than 2 years after the date

1002

1 on which the violation reported in subpara-
2 graph (A) is committed.

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

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

9 “(ii) the amount of back pay other-
10 wise owed to the individual, with interest;
11 and

12 “(iii) compensation for any special
13 damages sustained as a result of the dis-
14 charge or discrimination, including litiga-
15 tion costs, expert witness fees, and reason-
16 able attorney’s 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-

1003

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 552.

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

16 “(C) AVAILABILITY TO GOVERNMENT
17 AGENCIES.—

18 “(i) IN GENERAL.—Without the loss
19 of its status as confidential in the hands of
20 the Commission, all information referred to
21 in subparagraph (A) may, in the discretion
22 of the Commission, when determined by
23 the Commission to be necessary or appro-
24 priate to accomplish the purposes of this
25 Act and protect customers and in accord-

1004

1 ance with clause (ii), be made available
2 to—

3 “(I) the Department of Justice;

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

8 “(III) a registered entity, reg-
9 istered futures association, or self-reg-
10 ulatory organization as defined in sec-
11 tion 3(a) of the Securities Exchange
12 Act of 1934 (15 U.S.C. 78e(a));

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

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

19 “(VI) a foreign futures authority.

20 “(ii) MAINTENANCE OF INFORMA-
21 TION.—Each of the entities, agencies, or
22 persons described in clause (i) shall main-
23 tain information described in that clause
24 as confidential, in accordance with the re-
25 quirements in subparagraph (A).

1005

1 “(iii) STUDY ON IMPACT OF FOIA EX-
2 EMPTION ON CFTC.—

3 “(I) STUDY.—The Inspector
4 General of the Commission shall con-
5 duct a study—

6 “(aa) on whether the exemp-
7 tion under section 552(b)(3) of
8 title 5, United States Code
9 (known as the Freedom of Infor-
10 mation Act) established in para-
11 graph (2)(A) aids whistleblowers
12 in disclosing information to the
13 Commission;

14 “(bb) on what impact the
15 exemption has had on the
16 public’s ability to access informa-
17 tion about the Commission’s reg-
18 ulation of commodity futures and
19 option markets; and

20 “(cc) to make any rec-
21 ommendations on whether the
22 Commission should continue to
23 use the exemption.

24 “(II) REPORT.—Not later than
25 30 months after the date of enact-

1006

1 ment of this clause, the Inspector
2 General shall—

3 “(aa) submit a report on the
4 findings of the study required
5 under this clause to the Com-
6 mittee on Banking, Housing, and
7 Urban Affairs of the Senate and
8 the Committee on Financial
9 Services of the House of Rep-
10 representatives; and

11 “(bb) make the report avail-
12 able to the public through publi-
13 cation of a report on the website
14 of the Commission.

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

20 “(i) RULEMAKING AUTHORITY.—The Commission
21 shall have the authority to issue such rules and regulations
22 as may be necessary or appropriate to implement the pro-
23 visions of this section consistent with the purposes of this
24 section.

1007

1 “(j) IMPLEMENTING RULES.—The Commission shall
2 issue final rules or regulations implementing the provi-
3 sions of this section not later than 270 days after the date
4 of enactment of the Wall Street Transparency and Ac-
5 countability Act of 2010.

6 “(k) ORIGINAL INFORMATION.—Information sub-
7 mitted to the Commission by a whistleblower in accord-
8 ance with rules or regulations implementing this section
9 shall not lose its status as original information solely be-
10 cause the whistleblower submitted such information prior
11 to the effective date of such rules or regulations, provided
12 such information was submitted after the date of enact-
13 ment of the Wall Street Transparency and Accountability
14 Act of 2010.

15 “(l) AWARDS.—A whistleblower may receive an award
16 pursuant to this section regardless of whether any viola-
17 tion of a provision of this Act, or a rule or regulation
18 thereunder, underlying the judicial or administrative ac-
19 tion upon which the award is based occurred prior to the
20 date of enactment of the Wall Street Transparency and
21 Accountability Act of 2010.

22 “(m) PROVISION OF FALSE INFORMATION.—A whis-
23 tleblower 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

1008

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 “(n) NONENFORCEABILITY OF CERTAIN PROVISIONS
6 WAIVING RIGHTS AND REMEDIES OR REQUIRING ARBI-
7 TRATION OF DISPUTES.—

8 “(1) WAIVER OF RIGHTS AND REMEDIES.—The
9 rights and remedies provided for in this section may
10 not be waived by any agreement, policy form, or con-
11 dition of employment including by a predispute arbi-
12 tration agreement.

13 “(2) PREDISPUTE ARBITRATION AGREE-
14 MENTS.—No predispute arbitration agreement shall
15 be valid or enforceable, if the agreement requires ar-
16 bitration of a dispute arising under this section.”.

17 **SEC. 749. CONFORMING AMENDMENTS.**

18 (a) Section 4d of the Commodity Exchange Act (7
19 U.S.C. 6d) (as amended by section 724) is amended—

20 (1) in subsection (a)—

21 (A) in the matter preceding paragraph

22 (1)—

23 (i) by striking “engage as” and insert-
24 ing “be a”; and

1267

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

1268

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.

1269

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.

1270

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

1271

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;

1272

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-

1273

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—

1274

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-

1275

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.

1276

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;

1277

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

1278

1 and conditions of employment because of any
2 lawful act done by the whistleblower—

3 “(i) in providing information to the
4 Commission in accordance with this sec-
5 tion;

6 “(ii) in initiating, testifying in, or as-
7 sisting in any investigation or judicial or
8 administrative action of the Commission
9 based upon or related to such information;
10 or

11 “(iii) in making disclosures that are
12 required or protected under the Sarbanes-
13 Oxley Act of 2002 (15 U.S.C. 7201 et
14 seq.), the Securities Exchange Act of 1934
15 (15 U.S.C. 78a et seq.), including section
16 10A(m) of such Act (15 U.S.C. 78f(m)),
17 section 1513(e) of title 18, United States
18 Code, and any other law, rule, or regula-
19 tion subject to the jurisdiction of the Com-
20 mission.

21 “(B) ENFORCEMENT.—

22 “(i) CAUSE OF ACTION.—An indi-
23 vidual who alleges discharge or other dis-
24 crimination in violation of subparagraph
25 (A) may bring an action under this sub-

1279

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-

1280

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-

1281

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

1282

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.—

1283

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 tbleblower 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

1284

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)—

1285

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

1286

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

1287

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

1288

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.

1289

1 **SEC. 923. CONFORMING AMENDMENTS FOR WHISTLE-**
2 **BLOWER PROTECTION.**

3 (a) IN GENERAL.—

4 (1) SECURITIES ACT OF 1933.—Section
5 20(d)(3)(A) of the Securities Act of 1933 (15 U.S.C.
6 77t(d)(3)(A)) is amended by inserting “and section
7 21F of the Securities Exchange Act of 1934” after
8 “the Sarbanes-Oxley Act of 2002”.

9 (2) INVESTMENT COMPANY ACT OF 1940.—Sec-
10 tion 42(e)(3)(A) of the Investment Company Act of
11 1940 (15 U.S.C. 80a–41(e)(3)(A)) is amended by
12 inserting “and section 21F of the Securities Ex-
13 change Act of 1934” after “the Sarbanes-Oxley Act
14 of 2002”.

15 (3) INVESTMENT ADVISERS ACT OF 1940.—Sec-
16 tion 209(e)(3)(A) of the Investment Advisers Act of
17 1940 (15 U.S.C. 80b–9(e)(3)(A)) is amended by in-
18 serting “and section 21F of the Securities Exchange
19 Act of 1934” after “the Sarbanes-Oxley Act of
20 2002”.

21 (b) SECURITIES EXCHANGE ACT.—

22 (1) SECTION 21.—Section 21(d)(3)(C)(i) of the
23 Securities Exchange Act of 1934 (15 U.S.C.
24 78u(d)(3)(C)(i)) is amended by inserting “and sec-
25 tion 21F of this title” after “the Sarbanes-Oxley Act
26 of 2002”.

1290

1 (2) SECTION 21A.—Section 21A of the Securi-
2 ties Exchange Act of 1934 (15 U.S.C. 78u–1) is
3 amended—

4 (A) in subsection (d)(1) by—

5 (i) striking “(subject to subsection
6 (e))”; and

7 (ii) inserting “and section 21F of this
8 title” after “the Sarbanes-Oxley Act of
9 2002”;

10 (B) by striking subsection (e); and

11 (C) by redesignating subsections (f) and
12 (g) as subsections (e) and (f), respectively.

13 **SEC. 924. IMPLEMENTATION AND TRANSITION PROVISIONS**
14 **FOR WHISTLEBLOWER PROTECTION.**

15 (a) IMPLEMENTING RULES.—The Commission shall
16 issue final regulations implementing the provisions of sec-
17 tion 21F of the Securities Exchange Act of 1934, as added
18 by this subtitle, not later than 270 days after the date
19 of enactment of this Act.

20 (b) ORIGINAL INFORMATION.—Information provided
21 to the Commission in writing by a whistleblower shall not
22 lose the status of original information (as defined in sec-
23 tion 21F(a)(3) of the Securities Exchange Act of 1934,
24 as added by this subtitle) solely because the whistleblower
25 provided the information prior to the effective date of the

1291

1 regulations, if the information is provided by the whistle-
2 blower after the date of enactment of this subtitle.

3 (c) AWARDS.—A whistleblower may receive an award
4 pursuant to section 21F of the Securities Exchange Act
5 of 1934, as added by this subtitle, regardless of whether
6 any violation of a provision of the securities laws, or a
7 rule or regulation thereunder, underlying the judicial or
8 administrative action upon which the award is based, oc-
9 curred prior to the date of enactment of this subtitle.

10 (d) ADMINISTRATION AND ENFORCEMENT.—The Se-
11 curities and Exchange Commission shall establish a sepa-
12 rate office within the Commission to administer and en-
13 force the provisions of section 21F of the Securities Ex-
14 change Act of 1934 (as add by section 922(a)). Such office
15 shall report annually to the Committee on Banking, Hous-
16 ing, and Urban Affairs of the Senate and the Committee
17 on Financial Services of the House of Representatives on
18 its activities, whistleblower complaints, and the response
19 of the Commission to such complaints.

20 **SEC. 925. COLLATERAL BARS.**

21 (a) SECURITIES EXCHANGE ACT OF 1934.—

22 (1) SECTION 15.—Section 15(b)(6)(A) of the
23 Securities Exchange Act of 1934 (15 U.S.C.
24 78o(b)(6)(A)) is amended by striking “12 months,
25 or bar such person from being associated with a

1296

1 **SEC. 929A. PROTECTION FOR EMPLOYEES OF SUBSIDI-**
2 **ARIES AND AFFILIATES OF PUBLICLY TRAD-**
3 **ED COMPANIES.**

4 Section 1514A of title 18, United States Code, is
5 amended by inserting “including any subsidiary or affil-
6 iate whose financial information is included in the consoli-
7 dated financial statements of such company” after “the
8 Securities Exchange Act of 1934 (15 U.S.C. 78o(d))”.

9 **SEC. 929B. FAIR FUND AMENDMENTS.**

10 Section 308 of the Sarbanes-Oxley Act of 2002 (15
11 U.S.C. 7246(a)) is amended—

12 (1) by striking subsection (a) and inserting the
13 following:

14 “(a) CIVIL PENALTIES TO BE USED FOR THE RE-
15 LIEF OF VICTIMS.—If, in any judicial or administrative
16 action brought by the Commission under the securities
17 laws, the Commission obtains a civil penalty against any
18 person for a violation of such laws, or such person agrees,
19 in settlement of any such action, to such civil penalty, the
20 amount of such civil penalty shall, on the motion or at
21 the direction of the Commission, be added to and become
22 part of a disgorgement fund or other fund established for
23 the benefit of the victims of such violation.”;

24 (2) in subsection (b)—

25 (A) by striking “for a disgorgement fund
26 described in subsection (a)” and inserting “for

1782

1 the proceeding, and may be deducted from any sums
2 owing by the United States to the person charged.

3 (5) NOTICE AND HEARING.—No civil penalty
4 may be assessed under this subsection with respect
5 to a violation of any Federal consumer financial law,
6 unless—

7 (A) the Bureau gives notice and an oppor-
8 tunity for a hearing to the person accused of
9 the violation; or

10 (B) the appropriate court has ordered such
11 assessment and entered judgment in favor of
12 the Bureau.

13 **SEC. 1056. REFERRALS FOR CRIMINAL PROCEEDINGS.**

14 If the Bureau obtains evidence that any person, do-
15 mestic or foreign, has engaged in conduct that may con-
16 stitute a violation of Federal criminal law, the Bureau
17 shall transmit such evidence to the Attorney General of
18 the United States, who may institute criminal proceedings
19 under appropriate law. Nothing in this section affects any
20 other authority of the Bureau to disclose information.

21 **SEC. 1057. EMPLOYEE PROTECTION.**

22 (a) IN GENERAL.—No covered person or service pro-
23 vider shall terminate or in any other way discriminate
24 against, or cause to be terminated or discriminated
25 against, any covered employee or any authorized rep-

1783

1 representative of covered employees by reason of the fact that
2 such employee or representative, whether at the initiative
3 of the employee or in the ordinary course of the duties
4 of the employee (or any person acting pursuant to a re-
5 quest of the employee), has—

6 (1) provided, caused to be provided, or is about
7 to provide or cause to be provided, information to
8 the employer, the Bureau, or any other State, local,
9 or Federal, government authority or law enforce-
10 ment agency relating to any violation of, or any act
11 or omission that the employee reasonably believes to
12 be a violation of, any provision of this title or any
13 other provision of law that is subject to the jurisdic-
14 tion of the Bureau, or any rule, order, standard, or
15 prohibition prescribed by the Bureau;

16 (2) testified or will testify in any proceeding re-
17 sulting from the administration or enforcement of
18 any provision of this title or any other provision of
19 law that is subject to the jurisdiction of the Bureau,
20 or any rule, order, standard, or prohibition pre-
21 scribed by the Bureau;

22 (3) filed, instituted, or caused to be filed or in-
23 stituted any proceeding under any Federal consumer
24 financial law; or

1784

1 (4) objected to, or refused to participate in, any
2 activity, policy, practice, or assigned task that the
3 employee (or other such person) reasonably believed
4 to be in violation of any law, rule, order, standard,
5 or prohibition, subject to the jurisdiction of, or en-
6 forceable by, the Bureau.

7 (b) DEFINITION OF COVERED EMPLOYEE.—For the
8 purposes of this section, the term “covered employee”
9 means any individual performing tasks related to the of-
10 fering or provision of a consumer financial product or
11 service.

12 (c) PROCEDURES AND TIMETABLES.—

13 (1) COMPLAINT.—

14 (A) IN GENERAL.—A person who believes
15 that he or she has been discharged or otherwise
16 discriminated against by any person in violation
17 of subsection (a) may, not later than 180 days
18 after the date on which such alleged violation
19 occurs, file (or have any person file on his or
20 her behalf) a complaint with the Secretary of
21 Labor alleging such discharge or discrimination
22 and identifying the person responsible for such
23 act.

24 (B) ACTIONS OF SECRETARY OF LABOR.—

25 Upon receipt of such a complaint, the Secretary

1785

1 of Labor shall notify, in writing, the person
2 named in the complaint who is alleged to have
3 committed the violation, of—

4 (i) the filing of the complaint;

5 (ii) the allegations contained in the
6 complaint;

7 (iii) the substance of evidence sup-
8 porting the complaint; and

9 (iv) opportunities that will be afforded
10 to such person under paragraph (2).

11 (2) INVESTIGATION BY SECRETARY OF
12 LABOR.—

13 (A) IN GENERAL.—Not later than 60 days
14 after the date of receipt of a complaint filed
15 under paragraph (1), and after affording the
16 complainant and the person named in the com-
17 plaint who is alleged to have committed the vio-
18 lation that is the basis for the complaint an op-
19 portunity to submit to the Secretary of Labor
20 a written response to the complaint and an op-
21 portunity to meet with a representative of the
22 Secretary of Labor to present statements from
23 witnesses, the Secretary of Labor shall—

1786

1 (i) initiate an investigation and deter-
2 mine whether there is reasonable cause to
3 believe that the complaint has merit; and

4 (ii) notify the complainant and the
5 person alleged to have committed the viola-
6 tion of subsection (a), in writing, of such
7 determination.

8 (B) NOTICE OF RELIEF AVAILABLE.—If
9 the Secretary of Labor concludes that there is
10 reasonable cause to believe that a violation of
11 subsection (a) has occurred, the Secretary of
12 Labor shall, together with the notice under sub-
13 paragraph (A)(ii), issue a preliminary order
14 providing the relief prescribed by paragraph
15 (4)(B).

16 (C) REQUEST FOR HEARING.—Not later
17 than 30 days after the date of receipt of notifi-
18 cation of a determination of the Secretary of
19 Labor under this paragraph, either the person
20 alleged to have committed the violation or the
21 complainant may file objections to the findings
22 or preliminary order, or both, and request a
23 hearing on the record. The filing of such objec-
24 tions shall not operate to stay any reinstatement
25 remedy contained in the preliminary

1787

1 order. Any such hearing shall be conducted ex-
2 peditiously, and if a hearing is not requested in
3 such 30-day period, the preliminary order shall
4 be deemed a final order that is not subject to
5 judicial review.

6 (3) GROUNDS FOR DETERMINATION OF COM-
7 PLAINTS.—

8 (A) IN GENERAL.—The Secretary of Labor
9 shall dismiss a complaint filed under this sub-
10 section, and shall not conduct an investigation
11 otherwise required under paragraph (2), unless
12 the complainant makes a prima facie showing
13 that any behavior described in paragraphs (1)
14 through (4) of subsection (a) was a contrib-
15 uting factor in the unfavorable personnel action
16 alleged in the complaint.

17 (B) REBUTTAL EVIDENCE.—Notwith-
18 standing a finding by the Secretary of Labor
19 that the complainant has made the showing re-
20 quired under subparagraph (A), no investiga-
21 tion otherwise required under paragraph (2)
22 shall be conducted, if the employer dem-
23 onstrates, by clear and convincing evidence,
24 that the employer would have taken the same

1788

1 unfavorable personnel action in the absence of
2 that behavior.

3 (C) EVIDENTIARY STANDARDS.—The Sec-
4 retary of Labor may determine that a violation
5 of subsection (a) has occurred only if the com-
6 plainant demonstrates that any behavior de-
7 scribed in paragraphs (1) through (4) of sub-
8 section (a) was a contributing factor in the un-
9 favorable personnel action alleged in the com-
10 plaint. Relief may not be ordered under sub-
11 paragraph (A) if the employer demonstrates by
12 clear and convincing evidence that the employer
13 would have taken the same unfavorable per-
14 sonnel action in the absence of that behavior.

15 (4) ISSUANCE OF FINAL ORDERS; REVIEW PRO-
16 CEDURES.—

17 (A) TIMING.—Not later than 120 days
18 after the date of conclusion of any hearing
19 under paragraph (2), the Secretary of Labor
20 shall issue a final order providing the relief pre-
21 scribed by this paragraph or denying the com-
22 plaint. At any time before issuance of a final
23 order, a proceeding under this subsection may
24 be terminated on the basis of a settlement
25 agreement entered into by the Secretary of

1789

1 Labor, the complainant, and the person alleged
2 to have committed the violation.

3 (B) PENALTIES.—

4 (i) ORDER OF SECRETARY OF
5 LABOR.—If, in response to a complaint
6 filed under paragraph (1), the Secretary of
7 Labor determines that a violation of sub-
8 section (a) has occurred, the Secretary of
9 Labor shall order the person who com-
10 mitted such violation—

11 (I) to take affirmative action to
12 abate the violation;

13 (II) to reinstate the complainant
14 to his or her former position, together
15 with compensation (including back
16 pay) and restore the terms, condi-
17 tions, and privileges associated with
18 his or her employment; and

19 (III) to provide compensatory
20 damages to the complainant.

21 (ii) PENALTY.—If an order is issued
22 under clause (i), the Secretary of Labor, at
23 the request of the complainant, shall assess
24 against the person against whom the order
25 is issued, a sum equal to the aggregate

1790

1 amount of all costs and expenses (includ-
2 ing attorney fees and expert witness fees)
3 reasonably incurred, as determined by the
4 Secretary of Labor, by the complainant
5 for, or in connection with, the bringing of
6 the complaint upon which the order was
7 issued.

8 (C) PENALTY FOR FRIVOLOUS CLAIMS.—If
9 the Secretary of Labor finds that a complaint
10 under paragraph (1) is frivolous or has been
11 brought in bad faith, the Secretary of Labor
12 may award to the prevailing employer a reason-
13 able attorney fee, not exceeding \$1,000, to be
14 paid by the complainant.

15 (D) DE NOVO REVIEW.—

16 (i) FAILURE OF THE SECRETARY TO
17 ACT.—If the Secretary of Labor has not
18 issued a final order within 210 days after
19 the date of filing of a complaint under this
20 subsection, or within 90 days after the
21 date of receipt of a written determination,
22 the complainant may bring an action at
23 law or equity for de novo review in the ap-
24 propriate district court of the United
25 States having jurisdiction, which shall have

1791

1 jurisdiction over such an action without re-
2 gard to the amount in controversy, and
3 which action shall, at the request of either
4 party to such action, be tried by the court
5 with a jury.

6 (ii) PROCEDURES.—A proceeding
7 under clause (i) shall be governed by the
8 same legal burdens of proof specified in
9 paragraph (3). The court shall have juris-
10 diction to grant all relief necessary to
11 make the employee whole, including injunc-
12 tive relief and compensatory damages, in-
13 cluding—

14 (I) reinstatement with the same
15 seniority status that the employee
16 would have had, but for the discharge
17 or discrimination;

18 (II) the amount of back pay, with
19 interest; and

20 (III) compensation for any spe-
21 cial damages sustained as a result of
22 the discharge or discrimination, in-
23 cluding litigation costs, expert witness
24 fees, and reasonable attorney fees.

1792

1 (E) OTHER APPEALS.—Unless the com-
2 plainant brings an action under subparagraph
3 (D), any person adversely affected or aggrieved
4 by a final order issued under subparagraph (A)
5 may file a petition for review of the order in the
6 United States Court of Appeals for the circuit
7 in which the violation with respect to which the
8 order was issued, allegedly occurred or the cir-
9 cuit in which the complainant resided on the
10 date of such violation, not later than 60 days
11 after the date of the issuance of the final order
12 of the Secretary of Labor under subparagraph
13 (A). Review shall conform to chapter 7 of title
14 5, United States Code. The commencement of
15 proceedings under this subparagraph shall not,
16 unless ordered by the court, operate as a stay
17 of the order. An order of the Secretary of
18 Labor with respect to which review could have
19 been obtained under this subparagraph shall
20 not be subject to judicial review in any criminal
21 or other civil proceeding.

22 (5) FAILURE TO COMPLY WITH ORDER.—

23 (A) ACTIONS BY THE SECRETARY.—If any
24 person has failed to comply with a final order
25 issued under paragraph (4), the Secretary of

1793

1 Labor may file a civil action in the United
2 States district court for the district in which
3 the violation was found to have occurred, or in
4 the United States district court for the District
5 of Columbia, to enforce such order. In actions
6 brought under this paragraph, the district
7 courts shall have jurisdiction to grant all appro-
8 priate relief including injunctive relief and com-
9 pensatory damages.

10 (B) CIVIL ACTIONS TO COMPEL COMPLI-
11 ANCE.—A person on whose behalf an order was
12 issued under paragraph (4) may commence a
13 civil action against the person to whom such
14 order was issued to require compliance with
15 such order. The appropriate United States dis-
16 trict court shall have jurisdiction, without re-
17 gard to the amount in controversy or the citi-
18 zenship of the parties, to enforce such order.

19 (C) AWARD OF COSTS AUTHORIZED.—The
20 court, in issuing any final order under this
21 paragraph, may award costs of litigation (in-
22 cluding reasonable attorney and expert witness
23 fees) to any party, whenever the court deter-
24 mines such award is appropriate.

1794

1 (D) MANDAMUS PROCEEDINGS.—Any non-
2 discretionary duty imposed by this section shall
3 be enforceable in a mandamus proceeding
4 brought under section 1361 of title 28, United
5 States Code.

6 (d) UNENFORCEABILITY OF CERTAIN AGREE-
7 MENTS.—

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

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

21 (3) EXCEPTION.—Notwithstanding paragraphs
22 (1) and (2), an arbitration provision in a collective
23 bargaining agreement shall be enforceable as to dis-
24 putes arising under subsection (a)(4), unless the Bu-

1795

1 reau determines, by rule, that such provision is in-
2 consistent with the purposes of this title.

3 **SEC. 1058. EFFECTIVE DATE.**

4 This subtitle shall become effective on the designated
5 transfer date.

6 **Subtitle F—Transfer of Functions**
7 **and Personnel; Transitional**
8 **Provisions**

9 **SEC. 1061. TRANSFER OF CONSUMER FINANCIAL PROTEC-**
10 **TION FUNCTIONS.**

11 (a) DEFINED TERMS.—For purposes of this sub-
12 title—

13 (1) the term “consumer financial protection
14 functions” means—

15 (A) all authority to prescribe rules or issue
16 orders or guidelines pursuant to any Federal
17 consumer financial law, including performing
18 appropriate functions to promulgate and review
19 such rules, orders, and guidelines; and

20 (B) the examination authority described in
21 subsection (c)(1), with respect to a person de-
22 scribed in subsection 1025(a); and

23 (2) the terms “transferor agency” and “trans-
24 feror agencies” mean, respectively—

1912

1 from the taxpayer the contractual rights to sell the
2 taxpayer's relinquished property and transfers a re-
3 placement property to the taxpayer as a qualified
4 intermediary (within the meaning of Treasury Regu-
5 lations section 1.1031(k)-1(g)(4)) or enters into an
6 agreement with the taxpayer to take title to a prop-
7 erty as an exchange accommodation titleholder
8 (within the meaning of Revenue Procedure 2000-37)
9 or enters into an agreement with a taxpayer to act
10 as a qualified trustee or qualified escrow holder
11 (within the meaning of Treasury Regulations section
12 1.1031(k)-1(g)(3));

13 (2) maintains an office for the purpose of solici-
14 ting business to perform the services described in
15 paragraph (1); or

16 (3) advertises any of the services described in
17 paragraph (1) or solicits clients in printed publica-
18 tions, direct mail, television or radio advertisements,
19 telephone calls, facsimile transmissions, or other
20 electronic communications directed to the general
21 public for purposes of providing any such services.

22 **SEC. 1079B. FINANCIAL FRAUD PROVISIONS.**

23 (a) SENTENCING GUIDELINES.—

24 (1) SECURITIES FRAUD.—

1913

1 (A) DIRECTIVE.—Pursuant to its authority
2 under section 994 of title 28, United States
3 Code, and in accordance with this paragraph,
4 the United States Sentencing Commission shall
5 review and, if appropriate, amend the Federal
6 Sentencing Guidelines and policy statements
7 applicable to persons convicted of offenses relat-
8 ing to securities fraud or any other similar pro-
9 vision of law, in order to reflect the intent of
10 Congress that penalties for the offenses under
11 the guidelines and policy statements appro-
12 priately account for the potential and actual
13 harm to the public and the financial markets
14 from the offenses.

15 (B) REQUIREMENTS.—In making any
16 amendments to the Federal Sentencing Guide-
17 lines and policy statements under subparagraph
18 (A), the United States Sentencing Commission
19 shall—

20 (i) ensure that the guidelines and pol-
21 icy statements, particularly section
22 2B1.1(b)(14) and section 2B1.1(b)(17)
23 (and any successors thereto), reflect—

24 (I) the serious nature of the of-
25 fenses described in subparagraph (A);

1914

1 (II) the need for an effective de-
2 terrent and appropriate punishment
3 to prevent the offenses; and

4 (III) the effectiveness of incarcer-
5 ation in furthering the objectives de-
6 scribed in subclauses (I) and (II);

7 (ii) consider the extent to which the
8 guidelines appropriately account for the
9 potential and actual harm to the public
10 and the financial markets resulting from
11 the offenses;

12 (iii) ensure reasonable consistency
13 with other relevant directives and guide-
14 lines and Federal statutes;

15 (iv) make any necessary conforming
16 changes to guidelines; and

17 (v) ensure that the guidelines ade-
18 quately meet the purposes of sentencing,
19 as set forth in section 3553(a)(2) of title
20 18, United States Code.

21 (2) FINANCIAL INSTITUTION FRAUD.—

22 (A) DIRECTIVE.—Pursuant to its authority
23 under section 994 of title 28, United States
24 Code, and in accordance with this paragraph,
25 the United States Sentencing Commission shall

1915

1 review and, if appropriate, amend the Federal
2 Sentencing Guidelines and policy statements
3 applicable to persons convicted of fraud offenses
4 relating to financial institutions or federally re-
5 lated mortgage loans and any other similar pro-
6 visions of law, to reflect the intent of Congress
7 that the penalties for the offenses under the
8 guidelines and policy statements ensure appro-
9 priate terms of imprisonment for offenders in-
10 volved in substantial bank frauds or other
11 frauds relating to financial institutions.

12 (B) REQUIREMENTS.—In making any
13 amendments to the Federal Sentencing Guide-
14 lines and policy statements under subparagraph
15 (A), the United States Sentencing Commission
16 shall—

17 (i) ensure that the guidelines and pol-
18 icy statements reflect—

19 (I) the serious nature of the of-
20 fenses described in subparagraph (A);

21 (II) the need for an effective de-
22 terrent and appropriate punishment
23 to prevent the offenses; and

1916

1 (III) the effectiveness of incarceration
2 ation in furthering the objectives de-
3 scribed in subclauses (I) and (II);

4 (ii) consider the extent to which the
5 guidelines appropriately account for the
6 potential and actual harm to the public
7 and the financial markets resulting from
8 the offenses;

9 (iii) ensure reasonable consistency
10 with other relevant directives and guide-
11 lines and Federal statutes;

12 (iv) make any necessary conforming
13 changes to guidelines; and

14 (v) ensure that the guidelines ade-
15 quately meet the purposes of sentencing,
16 as set forth in section 3553(a)(2) of title
17 18, United States Code.

18 (b) EXTENSION OF STATUTE OF LIMITATIONS FOR
19 SECURITIES FRAUD VIOLATIONS.—

20 (1) IN GENERAL.—Chapter 213 of title 18,
21 United States Code, is amended by adding at the
22 end the following:

1917

1 **“§ 3301. Securities fraud offenses**

2 “(a) DEFINITION.—In this section, the term ‘securi-
3 ties fraud offense’ means a violation of, or a conspiracy
4 or an attempt to violate—

5 “(1) section 1348;

6 “(2) section 32(a) of the Securities Exchange
7 Act of 1934 (15 U.S.C. 78ff(a));

8 “(3) section 24 of the Securities Act of 1933
9 (15 U.S.C. 77x);

10 “(4) section 217 of the Investment Advisers Act
11 of 1940 (15 U.S.C. 80b–17);

12 “(5) section 49 of the Investment Company Act
13 of 1940 (15 U.S.C. 80a–48); or

14 “(6) section 325 of the Trust Indenture Act of
15 1939 (15 U.S.C. 77yyy).

16 “(b) LIMITATION.—No person shall be prosecuted,
17 tried, or punished for a securities fraud offense, unless the
18 indictment is found or the information is instituted within
19 6 years after the commission of the offense.”.

20 (2) TECHNICAL AND CONFORMING AMEND-
21 MENT.—The table of sections for chapter 213 of
22 title 18, United States Code, is amended by adding
23 at the end the following:

“3301. Securities fraud offenses.”.

1918

1 (c) AMENDMENTS TO THE FALSE CLAIMS ACT RE-
 2 LATING TO LIMITATIONS ON ACTIONS.—Section 3730(h)
 3 of title 31, United States Code, is amended—

4 (1) in paragraph (1), by striking “or agent on
 5 behalf of the employee, contractor, or agent or asso-
 6 ciated others in furtherance of other efforts to stop
 7 1 or more violations of this subchapter” and insert-
 8 ing “agent or associated others in furtherance of an
 9 action under this section or other efforts to stop 1
 10 or more violations of this subchapter”; and

11 (2) by adding at the end the following:

12 “(3) LIMITATION ON BRINGING CIVIL AC-
 13 TION.—A civil action under this subsection may not
 14 be brought more than 3 years after the date when
 15 the retaliation occurred.”.

16 **Subtitle H—Conforming** 17 **Amendments**

18 **SEC. 1081. AMENDMENTS TO THE INSPECTOR GENERAL** 19 **ACT.**

20 Effective on the date of enactment of this Act, the
 21 Inspector General Act of 1978 (5 U.S.C. App. 3) is
 22 amended—

23 (1) in section 8G(a)(2), by inserting “and the
 24 Bureau of Consumer Financial Protection” after