

117TH CONGRESS
1ST SESSION

H. R. 6093

To provide incentives for and protect whistleblowers under the authority
of the Federal Trade Commission, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 30, 2021

Ms. SCHAKOWSKY (for herself and Mrs. TRAHAN) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide incentives for and protect whistleblowers under
the authority of the Federal Trade Commission, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “FTC Whistleblower
5 Act of 2021”.

6 **SEC. 2. PROTECTION OF WHISTLEBLOWERS.**

7 (a) PROTECTION FROM RETALIATION.—A covered
8 entity may not, directly or indirectly, discharge, demote,

1 suspend, threaten, harass, blacklist, or in any other man-
2 ner discriminate or take an adverse personnel action
3 against an individual, or any person perceived as assisting
4 the individual, who does any of the following:

5 (1) Makes (or the covered entity suspects the
6 individual has made or will make) a covered disclo-
7 sure to—

8 (A) a qualified entity;

9 (B) a person with supervisory authority
10 over the individual; or

11 (C) another individual who the individual
12 reasonably believes has the authority to inves-
13 tigate, discover, or terminate the violation in
14 the covered disclosure or to take any other ac-
15 tion to address the violation in the covered dis-
16 closure.

17 (2) Initiates, testifies, assists, or participates
18 (or the covered entity expects will initiate, testify,
19 assist, or participate) in an investigation or judicial
20 or administrative proceeding by a qualified entity.

21 (3) Objects to, or refuses to participate in, any
22 activity, policy, practice, or assigned task that the
23 individual (or other such person) reasonably believes
24 is a potential or suspected violation of any law, rule,
25 or regulation enforced by the Commission.

1 (b) ENFORCEMENT.—

2 (1) CAUSE OF ACTION.—An individual who al-
3 leges a violation of subsection (a) may bring an ac-
4 tion under this subsection in the appropriate district
5 court of the United States for the relief provided in
6 subsection (c).

7 (2) STATUTE OF LIMITATIONS.—

8 (A) IN GENERAL.—An action under this
9 subsection may not be brought—

10 (i) more than 6 years after the date
11 on which the violation of subsection (a) oc-
12 curred; or

13 (ii) more than 3 years after the date
14 on which facts material to the right of ac-
15 tion are known or reasonably should have
16 been known by the whistleblower alleging a
17 violation of subsection (a).

18 (B) REQUIRED ACTION WITHIN 10
19 YEARS.—Notwithstanding subparagraph (A), an
20 action under this subsection may not in any cir-
21 cumstance be brought more than 10 years after
22 the date on which the violation occurs.

23 (3) WAIVER OF RIGHTS AND REMEDIES.—The
24 rights and remedies provided for in this section may
25 not be waived by any policy form or condition of em-

1 ployment, including by a predispute arbitration
2 agreement.

3 (4) PREDISPUTE ARBITRATION AGREEMENTS.—

4 A predispute arbitration agreement is not valid or
5 enforceable if the agreement requires arbitration of
6 a dispute arising under this section.

7 (5) RESTRICTIVE COVENANT AGREEMENTS.—

8 An agreement in which a whistleblower is restrained
9 by the covered entity that was the subject of a cov-
10 ered disclosure from exercising a lawful profession,
11 trade, or business of any kind is not valid and not
12 enforceable.

13 (c) RELIEF.—Relief for an individual prevailing in an
14 action brought under subsection (a) includes the following:

15 (1) Reinstatement with the same seniority sta-
16 tus that the individual would have had, but for the
17 discharge or discrimination.

18 (2) Three times the amount of back pay other-
19 wise owed to the individual, with interest.

20 (3) Consequential and compensatory damages,
21 and compensation for litigation costs, expert witness
22 fees, and reasonable attorneys' fees.

23 (d) COMMUNICATIONS.—

24 (1) PROHIBITION ON IMPEDING COVERED DIS-
25 CLOSURE.—A covered entity may not take any ac-

1 tion that impedes or prevents an individual from
2 communicating directly with a qualified entity about
3 a covered disclosure, including enforcing, or threat-
4 ening to enforce, a confidentiality or non-disparage-
5 ment agreement.

6 (2) COMMUNICATION WITH QUALIFIED ENTI-
7 TIES.—A covered entity may not require the consent
8 of the counsel of the covered entity for a qualified
9 entity to communicate directly with an individual or
10 the attorney of an individual (if the individual is rep-
11 resented by an attorney) regarding a possible cov-
12 ered disclosure.

13 (3) ENFORCEMENT.—A violation of paragraph
14 (1) or (2) shall be treated as a violation of a rule
15 defining an unfair or deceptive act or practice pre-
16 scribed under section 18(a)(1)(B) of the Federal
17 Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).
18 The Commission shall enforce this subsection in the
19 same manner, by the same means, and with the
20 same jurisdiction, powers, and duties as though all
21 applicable terms and provisions of the Federal Trade
22 Commission Act (15 U.S.C. 41 et seq.) were incor-
23 porated into and made a part of this subsection. Any
24 person who violates paragraph (1) or (2) shall be
25 subject to the penalties and entitled to the privileges

1 and immunities provided in the Federal Trade Com-
2 mission Act.

3 (e) CONFIDENTIALITY.—Information that could rea-
4 sonably be expected to reveal the identity of a whistle-
5 blower, except as provided in section 21(d) of the Federal
6 Trade Commission Act (15 U.S.C. 57b–2(d))—

7 (1) shall be considered confidential;

8 (2) may not be disclosed; and

9 (3) is exempt from disclosure under section
10 552(b)(3) of title 5, United States Code.

11 (f) RULES OF CONSTRUCTION.—

12 (1) COLLECTIVE BARGAINING.—Nothing in this
13 section may be construed to diminish the rights,
14 privileges, or remedies of any whistleblower under
15 any Federal or State law, or under any collective
16 bargaining agreement.

17 (2) OTHER WHISTLEBLOWER PROTECTIONS.—
18 Nothing in this section may be construed to preempt
19 or supersede any other Federal or State law relating
20 to whistleblower protections.

21 **SEC. 3. INCENTIVES FOR WHISTLEBLOWERS.**

22 (a) AWARDS.—If a whistleblower voluntarily provides
23 to the Commission original information that the whistle-
24 blower reasonably believes relates to a potential or sus-
25 pected violation of any law, rule, or regulation enforced

1 by the Commission and the original information that the
2 whistleblower provided to the Commission leads to the suc-
3 cessful resolution of a covered action, the Commission,
4 subject to subsection (b), may pay an award to a whistle-
5 blower in an aggregate amount of—

6 (1) not less than 10 percent, in total, of col-
7 lected monetary sanctions; and

8 (2) not more than 30 percent, in total, of col-
9 lected monetary sanctions.

10 (b) DETERMINATION OF AWARDS; DENIAL OF
11 AWARDS.—

12 (1) DETERMINATION OF AWARDS.—

13 (A) DISCRETION.—The determination of
14 whether, to whom, or in what amount to make
15 an award shall be in the discretion of the Com-
16 mission subject to the provisions in subsection
17 (a).

18 (B) CRITERIA.—In determining an award
19 made under subsection (a), the Commission
20 shall take into consideration—

21 (i) the significance of the original in-
22 formation provided by the whistleblower to
23 the successful resolution of the covered ac-
24 tion;

- 1 (ii) the degree of assistance provided
2 by the whistleblower and any legal rep-
3 resentative of the whistleblower in the cov-
4 ered action; and
5 (iii) such additional factors as the
6 Commission considers relevant.

7 (2) DENIAL OF AWARDS.—The Commission
8 may deny an award under subsection (a)—

9 (A) to any whistleblower who is convicted
10 of a criminal violation related to the covered ac-
11 tion for which the whistleblower otherwise could
12 receive an award under this section;

13 (B) to any whistleblower who, acting with-
14 out direction from a covered entity, or agent
15 thereof, deliberately causes or substantially con-
16 tributes to the alleged violation in the covered
17 action; or

18 (C) to any whistleblower who fails to pro-
19 vide the original information to the Commission
20 in such form as the Commission may require by
21 regulation.

22 (c) REPRESENTATION.—A whistleblower may be rep-
23 resented by counsel.

1 (d) NO CONTRACT NECESSARY.—A contract with the
2 Commission is not necessary for a whistleblower to receive
3 an award under subsection (a).

4 (e) PROVISION OF FALSE INFORMATION.—A whistle-
5 blower who knowingly and intentionally makes any false,
6 fictitious, or fraudulent statement or representation, or
7 who makes or uses any false writing or document knowing
8 the same to contain any false, fictitious, or fraudulent
9 statement or entry, shall not be entitled to an award under
10 this section.

11 (f) APPEALS.—

12 (1) IN GENERAL.—Any determination made
13 under this section, including whether, to whom, or in
14 what amount to make an award, shall be in the dis-
15 cretion of the Commission.

16 (2) APPEALS.—Any determination made by the
17 Commission under this section may be appealed by
18 a whistleblower to the appropriate court of appeals
19 of the United States not later than 30 days after the
20 date on which a determination is issued by the Com-
21 mission.

22 (3) REVIEW.—The court shall review the deter-
23 mination made by the Commission in accordance
24 with section 706 of title 5, United States Code.

25 (g) RULES OF CONSTRUCTION.—

1 (1) ORIGINAL INFORMATION.—Original infor-
2 mation submitted to the Commission by a whistle-
3 blower in accordance with the requirements of this
4 section shall not lose the status as original informa-
5 tion solely because the whistleblower submitted the
6 information before the effective date of any regula-
7 tion issued under this Act if the information was
8 submitted after the date of the enactment of this
9 Act.

10 (2) AWARDS.—A whistleblower may receive an
11 award under this section regardless of whether the
12 violation in the covered action occurred before the
13 date of the enactment of this Act, and may receive
14 an award before the Commission promulgates any
15 regulation under this Act.

16 **SEC. 4. RULEMAKING.**

17 The Commission may issue such rules and regula-
18 tions, including regulations under section 553 of title 5,
19 United States Code, as may be necessary or appropriate
20 to implement the provisions of this Act.

21 **SEC. 5. DEFINITIONS.**

22 In this Act:

23 (1) COMMISSION.—The term “Commission”
24 means the Federal Trade Commission.

1 (2) COVERED ACTION.—The term “covered ac-
2 tion” means any administrative or judicial action,
3 including any related administrative or judicial ac-
4 tion, brought by the Commission or the Attorney
5 General under section 3 that in the aggregate re-
6 sults in monetary sanctions exceeding \$1,000,000.

7 (3) COVERED DISCLOSURE.—The term “cov-
8 ered disclosure” means a formal or informal commu-
9 nication or transmission that an individual reason-
10 ably believes relates to a potential or suspected viola-
11 tion of any law, rule, or regulation enforced by the
12 Commission.

13 (4) COVERED ENTITY.—The term “covered en-
14 tity” means an entity or individual subject to the ju-
15 risdiction of the Commission.

16 (5) MONETARY SANCTIONS.—The term “mone-
17 tary sanctions”—

18 (A) means monies, including penalties,
19 disgorgement, or interest, ordered or agreed to
20 be paid; and

21 (B) does not include any relief necessary to
22 redress injury to consumers, as determined by
23 the Commission.

24 (6) ORIGINAL INFORMATION.—The term “origi-
25 nal information” means information that—

1 (A) is derived from the independent knowl-
2 edge or analysis of an individual;

3 (B) is not known to the Commission from
4 any other source, unless the individual is the
5 original source of the information; and

6 (C) is not exclusively derived from an alle-
7 gation made in a judicial or an administrative
8 action, governmental report, hearing, audit, or
9 investigation, or from the news media, unless
10 the individual is a source of the information.

11 (7) QUALIFIED ENTITY.—The term “qualified
12 entity” means—

13 (A) the Commission; or

14 (B) a Federal entity, including any Mem-
15 ber or committee of Congress.

16 (8) SUCCESSFUL RESOLUTION.—The term
17 “successful resolution”, with respect to a covered ac-
18 tion, includes any settlement or adjudication of the
19 covered action.

20 (9) WHISTLEBLOWER.—The term “whistle-
21 blower” means—

22 (A) an individual (or group of individuals)
23 who is a current or former full-time, part-time,
24 or temporary employee, contractor, subcon-
25 tractor (at any tier), grantee, subgrantee, or

1 agent of a covered entity or employee of a con-
2 tractor or subcontractor (at any tier) of that
3 covered entity that engages in any of the con-
4 duct described under paragraph (1), (2), or (3)
5 of section 2(a); or

6 (B) any person that assists or is perceived
7 as assisting any such individual (or group of in-
8 dividuals).

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