

117TH CONGRESS  
1ST SESSION

# H. R. 5485

To amend the Securities Exchange Act of 1934 to expand the definition of whistleblower and increase anti-retaliation protections for whistleblowers, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 5, 2021

Mr. GREEN of Texas introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To amend the Securities Exchange Act of 1934 to expand the definition of whistleblower and increase anti-retaliation protections for whistleblowers, 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 “Whistleblower Protec-  
5 tion Reform Act of 2021”.

6 **SEC. 2. WHISTLEBLOWER PROTECTION ENHANCEMENTS.**

7 (a) IN GENERAL.—Section 21F of the Securities Ex-  
8 change Act of 1934 (15 U.S.C. 78u–6) is amended—

1 (1) in subsection (a)—

2 (A) in paragraph (4)—

3 (i) by striking subparagraph (A) and  
4 inserting the following:

5 “(A) any monies, including penalties,  
6 disgorgement, and interest, ordered to be paid  
7 or otherwise ordered as relief, including in—

8 “(i) a non-prosecution agreement en-  
9 tered by the Attorney General;

10 “(ii) a deferred prosecution agreement  
11 entered by the Attorney General; and

12 “(iii) an agreement entered by the  
13 Commission to settle a covered judicial or  
14 administrative proceeding; and”;

15 (ii) in subparagraph (B), by striking  
16 the period at the end and inserting “;  
17 and”; and

18 (iii) by adding at the end the fol-  
19 lowing:

20 “(C) any monies recovered by a bank-  
21 ruptcy trustee as a result of the original infor-  
22 mation provided by a whistleblower.”; and

23 (B) in paragraph (6)—

24 (i) by striking “(6) WHISTLE-  
25 BLOWER.—The term” and inserting:

1 “(6) WHISTLEBLOWER.—

2 “(A) IN GENERAL.—The term”; and

3 (ii) by adding at the end the fol-  
4 lowing:

5 “(B) SPECIAL RULE.—Solely for the pur-  
6 poses of subsection (h)(1), the term ‘whistle-  
7 blower’ shall also include any individual who  
8 takes an action described in subsection  
9 (h)(1)(A), or two or more individuals acting  
10 jointly who take an action described in sub-  
11 section (h)(1)(A), including as part of the job  
12 duties of such individual or individuals.”;

13 (2) in subsection (b), by adding at the end the  
14 following:

15 “(3) RELATED ACTIONS.—When determining  
16 whether to pay an award to a whistleblower in a re-  
17 lated action, the Commission may not consider  
18 whether another whistleblower reward program has  
19 a more direct or relevant connection to such related  
20 action based on information provided by such whis-  
21 tleblower.”;

22 (3) in subsection (c)(1)(B)(ii), by striking “the  
23 balance of the Fund” and inserting “the balance of  
24 the Investor Protection Fund or the amount of the  
25 potential award”;

1 (4) in subsection (g)(2)—

2 (A) in subparagraph (A), by striking  
3 “and” at the end;

4 (B) in subparagraph (B), by striking the  
5 period at the end and inserting “; and”; and

6 (C) by adding at the end the following:

7 “(C) funding the operations of the Securi-  
8 ties Exchange Commission Office of the Whis-  
9 tleblower.”;

10 (5) in subsection (h)(1)—

11 (A) in subparagraph (A)—

12 (i) by striking “, directly or indi-  
13 rectly,”;

14 (ii) by striking “discharge,” and in-  
15 serting “directly or indirectly discharge”;

16 (iii) by striking “employment” and in-  
17 serting “employment or post-employment”;

18 (iv) in clause (i), by striking “to the  
19 Commission” and inserting “to the Com-  
20 mission orally or in writing”;

21 (v) in clause (ii), by striking “or” at  
22 the end;

23 (vi) in clause (iii)—

24 (I) by striking “that are required  
25 or protected under” and inserting

1 “with respect to any conduct that the  
2 whistleblower reasonably believes evi-  
3 dences a violation of or is protected  
4 under”; and

5 (II) by striking the period at the  
6 end and inserting “; or”; and

7 (vii) by adding at the end the fol-  
8 lowing:

9 “(iv) in providing information regard-  
10 ing any conduct that has occurred, is ongoing,  
11 or is about to occur that the whistle-  
12 blower reasonably believes constitutes a  
13 violation of any law, rule, or regulation  
14 subject to the jurisdiction of the Commis-  
15 sion—

16 “(I) a person with supervisory  
17 authority over the whistleblower at the  
18 whistleblower’s employer, where such  
19 employer is an entity registered with  
20 or required to be registered with the  
21 Commission, a self-regulatory organi-  
22 zation, or a State securities commis-  
23 sion or office performing like func-  
24 tions; or

1 “(II) such other person working  
2 for the employer described under sub-  
3 clause (I) who has the authority to in-  
4 vestigate, discover, or terminate mis-  
5 conduct.”;

6 (B) in subparagraph (B)—

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

8 “(iv) JURY.—Each party to an action  
9 brought under subsection (h) of this sec-  
10 tion shall be entitled to a trial by jury.

11 “(v) BURDENS OF PROOF.—

12 “(I) IN GENERAL.—With respect  
13 to any complaint filed under this  
14 paragraph by a whistleblower against  
15 an employer, a whistleblower shall  
16 prevail in the action upon a showing  
17 that protected conduct was a contrib-  
18 uting factor in the unfavorable per-  
19 sonnel action alleged in the complaint.

20 “(II) ESTABLISHMENT OF CON-  
21 TRIBUTION FACTOR.—A whistleblower  
22 may establish that the protected con-  
23 duct was a contributing factor in the  
24 personnel action through circumstan-

1 tial evidence, including evidence  
2 that—

3 “(aa) the official that took  
4 the personnel action knew of the  
5 protected conduct engaged in by  
6 the whistleblower; and

7 “(bb) the official that took  
8 the personnel action did so within  
9 a period of time such that a rea-  
10 sonable person could conclude  
11 that the protected conduct en-  
12 gaged in by the whistleblower  
13 was a contributing factor in the  
14 personnel action.”; and

15 (ii) in clause (iii)(I)(bb), by striking  
16 “3” and inserting “6”; and  
17 (C) in subparagraph (C)—

18 (i) in clause (ii), by striking “and” at  
19 the end;

20 (ii) by striking clause (iii) and insert-  
21 ing the following:

22 “(iii) the payment of compensatory  
23 damages, including compensation for litiga-  
24 tion costs, expert witness fees, and reason-  
25 able attorneys’ fees; and”; and

1 (iii) by adding at the end the fol-  
 2 lowing:

3 “(iv) any other appropriate remedy as  
 4 determined by the Board with respect to  
 5 the conduct that is the subject of the com-  
 6 plaint.”; and

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

8 “(k) NONENFORCEABILITY OF CERTAIN PROVISIONS  
 9 WAIVING RIGHTS AND REMEDIES OR REQUIRING ARBI-  
 10 TRATION.—

11 “(1) IN GENERAL.—The rights and remedies  
 12 provided under this section may not be waived by  
 13 any agreement, policy form, or condition of employ-  
 14 ment, including by a predispute arbitration agree-  
 15 ment.

16 “(2) PREDISPUTE ARBITRATION AGREEMENT.—  
 17 If a predispute arbitration agreement requires arbi-  
 18 tration of a dispute arising under this section such  
 19 predispute arbitration agreement is not valid or en-  
 20 forceable.

21 “(3) EFFECTIVE DATE.—This subsection shall  
 22 be effective with respect to any action or agreement  
 23 that is filed on or after, or that is pending as of, the  
 24 date of enactment of this Act.”.

25 (b) TIMELY PROCESSING OF CLAIMS.—



1           (1) IN GENERAL.—Section 21F(b) of the Secu-  
2           rities Exchange Act of 1934 (15 U.S.C. 78u-6(b))  
3           is amended by adding at the end the following:

4           “(3) TIMELY PROCESSING OF CLAIMS.—

5           “(A) INITIAL DISPOSITION.—

6           “(i) IN GENERAL.—Except as pro-  
7           vided in subparagraph (B), the Commis-  
8           sion shall make an initial disposition with  
9           respect to any claim timely submitted by a  
10          whistleblower for an award under this sec-  
11          tion not later than 1 year after the submis-  
12          sion deadline established by the Commis-  
13          sion, by rule, for a whistleblower to file a  
14          claim.

15          “(ii) MULTIPLE ACTIONS.—If a claim  
16          submitted by a whistleblower for an award  
17          under this section involves 1 or more re-  
18          lated actions, the requirement described in  
19          clause (i) shall apply with respect to the  
20          latest of the submission deadlines applying  
21          to such claims.

22          “(B) EXCEPTIONS.—

23          “(i) INITIAL EXTENSION.—If the Di-  
24          rector of the Division of Enforcement of  
25          the Commission (in this paragraph re-

ferred to as the ‘Director’), determines that a claim is sufficiently complex or involves more than one whistleblower, or if other good cause exists such that, as determined by the Director, the Commission cannot reasonably satisfy the requirements described in subparagraph (A), the Director may, after providing notice to the Commission, extend the submission deadline established by the Commission for a whistleblower to file a claim as it applies to such by not more than 180 days.

“(ii) ADDITIONAL EXTENSIONS.—If, after providing an extension under clause (i), the Director determines that the Commission cannot reasonably satisfy the requirements under subparagraph (A) with respect to an award claim, as extended under clause (i), the Director may, after providing notice to the Commission, extend the period in which the Commission may satisfy subparagraph (A) by 1 additional 180 days.

“(iii) NOTICE TO WHISTLEBLOWER REQUIRED.—If the Director exercises the

1 extension authority described under clause  
2 (i) or clause (ii), the Director shall submit  
3 to the whistleblower that filed the award  
4 claim that is subject to that extension ac-  
5 tion by the Director with a written notifi-  
6 cation of such extension action by the Di-  
7 rector or the designee.”.

8 (2) RULES.—The Securities and Exchange  
9 Commission shall, not later than one year after the  
10 date of the enactment of this Act, issue such rules  
11 as the Securities and Exchange Commission deter-  
12 mines necessary to carry out section 21F(b)(3) of  
13 the Securities Exchange Act of 1934.

14 (c) EFFECTIVE DATE.—Except as otherwise pro-  
15 vided, the amendments made by this Act shall apply with  
16 respect to any claim involving a violation of section  
17 21F(h)(1) of the Securities Act of 1934, including any  
18 claim in an enforcement action or proceeding brought by  
19 the Securities and Exchange Commission that is pending  
20 in any appropriate judicial or administrative forum on the  
21 date of the enactment of this Act.

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