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

Ms. SCHAKOWSKY introduced the following bill; which was referred to the Committee on

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 Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “F’TC Whistleblower Act of 2021”.

4 SEC. 2. PROTECTION OF WHISTLEBLOWERS.

5 (a) PROTECTION FROM RETALIATION.—A covered entity may not, directly or indirectly, discharge, demote,
suspend, threaten, harass, blacklist, or in any other manner discriminate or take an adverse personnel action against an individual, or any person perceived as assisting the individual, who does any of the following:

(1) Makes (or the covered entity suspects the individual has made or will make) a covered disclosure to—

   (A) a qualified entity;

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

   (C) another individual who the individual reasonably believes has the authority to investigate, discover, or terminate the violation in the covered disclosure or to take any other action to address the violation in the covered disclosure.

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

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

(1) CAUSE OF ACTION.—An individual who alleges a violation of subsection (a) may bring an action under this subsection in the appropriate district court of the United States for the relief provided in subsection (c).

(2) STATUTE OF LIMITATIONS.—

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

(i) more than 6 years after the date on which the violation of subsection (a) occurred; or

(ii) more than 3 years after the date on which facts material to the right of action are known or reasonably should have been known by the whistleblower alleging a violation of subsection (a).

(B) REQUIRED ACTION WITHIN 10 YEARS.—Notwithstanding subparagraph (A), an action under this subsection may not in any circumstance be brought more than 10 years after the date on which the violation occurs.

(3) WAIVER OF RIGHTS AND REMEDIES.—The rights and remedies provided for in this section may not be waived by any policy form or condition of em-
ployment, including by a predispute arbitration agreement.

(4) PREDISPUTE ARBITRATION AGREEMENTS.—
A predispute arbitration agreement is not valid or enforceable if the agreement requires arbitration of a dispute arising under this section.

(5) RESTRICTIVE COVENANT AGREEMENTS.—
An agreement in which a whistleblower is restrained by the covered entity that was the subject of a covered disclosure from exercising a lawful profession, trade, or business of any kind is not valid and not enforceable.

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

(1) Reinstatement with the same seniority status that the individual would have had, but for the discharge or discrimination.

(2) Three times the amount of back pay otherwise owed to the individual, with interest.

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

d) COMMUNICATIONS.—

(1) PROHIBITION ON IMPEDING COVERED DISCLOSURE.—A covered entity may not take any ac-
tion that impedes or prevents an individual from communicating directly with a qualified entity about a covered disclosure, including enforcing, or threatening to enforce, a confidentiality or non-disparagement agreement.

(2) COMMUNICATION WITH QUALIFIED ENTITIES.—A covered entity may not require the consent of the counsel of the covered entity for a qualified entity to communicate directly with an individual or the attorney of an individual (if the individual is represented by an attorney) regarding a possible covered disclosure.

(3) ENFORCEMENT.—A violation of a paragraph (1) or (2) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)). The Commission shall enforce this subsection in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this subsection. Any person who violates paragraph (1) or (2) shall be subject to the penalties and entitled to the privileges
and immunities provided in the Federal Trade Commission Act.

(e) CONFIDENTIALITY.—Information that could reasonably be expected to reveal the identity of a whistleblower, except as provided in section 21(d) of the Federal Trade Commission Act (15 U.S.C. 57b-2(d))—

(1) shall be considered confidential;

(2) may not be disclosed; and

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

(f) RULES OF CONSTRUCTION.—

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

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

SEC. 3. INCENTIVES FOR WHISTLEBLOWERS.

(a) AWARDS.—If a whistleblower voluntarily provides to the Commission original information that the whistleblower reasonably believes relates to a potential or suspected violation of any law, rule, or regulation enforced
by the Commission and the original information that the whistleblower provided to the Commission leads to the successful resolution of a covered action, the Commission, subject to subsection (b), may pay an award to a whistleblower in an aggregate amount of—

(1) not less than 10 percent, in total, of collected monetary sanctions; and

(2) not more than 30 percent, in total, of collected monetary sanctions.

(b) **Determination of Awards; Denial of Awards.**—

(1) **Determination of Awards.**—

(A) Discretion.—The determination of whether, to whom, or in what amount to make an award shall be in the discretion of the Commission subject to the provisions in subsection (a).

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

(i) the significance of the original information provided by the whistleblower to the successful resolution of the covered action;
(ii) the degree of assistance provided
by the whistleblower and any legal rep-
resentative of the whistleblower in the cov-
ered action; and

(iii) such additional factors as the
Commission considers relevant.

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

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

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

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

(c) REPRESENTATION.—A whistleblower may be rep-
resented by counsel.
(d) NO CONTRACT NECESSARY.—A contract with the
Commission is not necessary for a whistleblower to receive
an award under subsection (a).

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

(f) APPEALS.—

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

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

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

(g) RULES OF CONSTRUCTION.—
(1) **ORIGINAL INFORMATION.**—Original information submitted to the Commission by a whistleblower in accordance with the requirements of this section shall not lose the status as original information solely because the whistleblower submitted the information before the effective date of any regulation issued under this Act if the information was submitted after the date of the enactment of this Act.

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

**SEC. 4. RULEMAKING.**

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

**SEC. 5. DEFINITIONS.**

In this Act:

(1) **COMMISSION.**—The term “Commission” means the Federal Trade Commission.
(2) COVERED ACTION.—The term "covered action" means any administrative or judicial action, including any related administrative or judicial action, brought by the Commission or the Attorney General under section 3 that in the aggregate results in monetary sanctions exceeding $1,000,000.

(3) COVERED DISCLOSURE.—The term "covered disclosure" means a formal or informal communication or transmission that an individual reasonably believes relates to a potential or suspected violation of any law, rule, or regulation enforced by the Commission.

(4) COVERED ENTITY.—The term "covered entity" means an entity or individual subject to the jurisdiction of the Commission.

(5) MONETARY SANCTIONS.—The term "monetary sanctions"

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

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

(6) ORIGINAL INFORMATION.—The term "original information" means information that—
(A) is derived from the independent knowledge or analysis of an individual;

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

(C) is not exclusively derived from an allegation made in a judicial or an administrative action, governmental report, hearing, audit, or investigation, or from the news media, unless the individual is a source of the information.

(7) QUALIFIED ENTITY.—The term "qualified entity" means—

(A) the Commission; or

(B) a Federal entity, including any Member or committee of Congress.

(8) SUCCESSFUL RESOLUTION.—The term "successful resolution", with respect to a covered action, includes any settlement or adjudication of the covered action.

(9) WHISTLEBLOWER.—The term "whistleblower" means—

(A) an individual (or group of individuals) who is a current or former full-time, part-time, or temporary employee, contractor, subcontractor (at any tier), grantee, subgrantee, or
agent of a covered entity or employee of a contractor or subcontractor (at any tier) of that covered entity that engages in any of the conduct described under paragraph (1), (2), or (3) of section 2(a); or

(B) any person that assists or is perceived as assisting any such individual (or group of individuals).