

117<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 7245

To establish a whistleblower program at the Public Company Accounting Oversight Board, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 28, 2022

Ms. GARCIA of Texas (for herself, Ms. PORTER, Ms. DEAN, Ms. ADAMS, Mr. CARTER of Louisiana, and Mr. GREEN of Texas) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on the Budget, 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

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## A BILL

To establish a whistleblower program at the Public Company Accounting Oversight Board, 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 “PCAOB Whistleblower  
5 Protection Act of 2022”.

6 **SEC. 2. WHISTLEBLOWER INCENTIVES AND PROTECTION.**

7 The Sarbanes-Oxley Act of 2002 is amended—

1           (1) in section 105 (15 U.S.C. 7215) by adding  
2           at the end the following:

3           “(f) WHISTLEBLOWER INCENTIVES AND PROTEC-  
4           TION.—

5           “(1) DEFINITIONS.—In this subsection the fol-  
6           lowing definitions shall apply:

7           “(A) COVERED PROCEEDING.—The term  
8           ‘covered proceeding’ means any disciplinary  
9           proceeding by the Board initiated after the date  
10          of the enactment of this subsection that results  
11          in monetary sanctions exceeding \$250,000.

12          “(B) ORIGINAL INFORMATION.—The term  
13          ‘original information’ means information that—

14                 “(i) is derived from the independent  
15                 knowledge or analysis of a whistleblower;

16                 “(ii) is not known to the Board from  
17                 any other source, unless the whistleblower  
18                 is the original source of the information;  
19                 and

20                 “(iii) is not exclusively derived from  
21                 an allegation made in a disciplinary pro-  
22                 ceeding, in a judicial or administrative  
23                 hearing, in a governmental report, hearing,  
24                 audit, or investigation, or from the news

1 media, unless the whistleblower is a source  
2 of the information.

3 “(C) MONETARY SANCTIONS.—The term  
4 ‘monetary sanctions’ means any civil money  
5 penalties imposed by the Board under sub-  
6 section (c)(4) as modified by the Commission  
7 under section 107(c)(3).

8 “(D) WHISTLEBLOWER.—

9 “(i) IN GENERAL.—The term ‘whistle-  
10 blower’ means any individual who provides,  
11 or two or more individuals acting jointly  
12 who provide, information relating to a vio-  
13 lation of this Act, the rules of the Board,  
14 the provisions of the securities laws relat-  
15 ing to the preparation and issuance of  
16 audit reports and the obligations and li-  
17 abilities of accountants with respect there-  
18 to, including the rules of the Board issued  
19 pursuant to this Act, or professional stand-  
20 ards.

21 “(ii) SPECIAL RULE.—Solely for the  
22 purposes of paragraph (7), the term ‘whis-  
23 tleblower’ shall also include any individual  
24 who takes an action described in para-  
25 graph 7(A), or two or more individuals act-

1           ing jointly who take an action described in  
2           paragraph 7(A).

3           “(2) AWARDS.—

4           “(A) IN GENERAL.—In any covered dis-  
5           ciplinary proceeding, the Board shall pay an  
6           award or awards to one or more whistleblowers  
7           who voluntarily provided original information to  
8           the Board that resulted in the board imposing  
9           monetary sanctions, in an aggregate amount  
10          determined in the discretion of the Board but  
11          equal to—

12                   “(i) not less than 10 percent, in total,  
13                   of what has been collected of the monetary  
14                   sanctions imposed; and

15                   “(ii) not more than 30 percent, in  
16                   total, of what has been collected of the  
17                   monetary sanctions.

18          “(B) PAYMENT OF AWARDS.—Any amount  
19          paid under this subparagraph shall be paid  
20          from any funds generated from the collection of  
21          monetary sanctions.

22          “(3) DETERMINATION OF AMOUNT OF AWARD;  
23          DENIAL OF AWARD.—

24                   “(A) DETERMINATION OF AMOUNT OF  
25                   AWARD.—

1           “(i) DISCRETION.—The determination  
2           of the amount of an award made under  
3           paragraph (2) shall be in the discretion of  
4           the Board.

5           “(ii) CRITERIA.—In determining the  
6           amount of an award made under subpara-  
7           graph (A), the Board shall take into con-  
8           sideration—

9                   “(I) the significance of the infor-  
10                  mation provided by the whistleblower  
11                  to the success of the disciplinary pro-  
12                  ceeding;

13                   “(II) the degree of assistance  
14                  provided by the whistleblower and any  
15                  legal representative of the whistle-  
16                  blower in a disciplinary proceeding;  
17                  and

18                   “(III) the programmatic interest  
19                  of the Board in deterring violations by  
20                  making awards to whistleblowers who  
21                  provide information that lead to suc-  
22                  cessful enforcement.

23           “(B) DENIAL OF AWARD.—No award  
24           under subparagraph (A) shall be made—

1           “(i) to any whistleblower who is, or  
2           was at the time the whistleblower acquired  
3           the original information submitted to the  
4           Board, a member, officer, or employee of—

5                   “(I) an appropriate regulatory  
6                   agency (as such term is defined in  
7                   section 3 of the Securities Exchange  
8                   Act of 1934);

9                   “(II) the Department of Justice;

10                   “(III) a self-regulatory organiza-  
11                   tion (as such term is defined in sec-  
12                   tion 34 of the Securities Exchange  
13                   Act of 1934);

14                   “(IV) the Public Company Ac-  
15                   counting Oversight Board; or

16                   “(V) a law enforcement organiza-  
17                   tion;

18           “(ii) to any whistleblower who is con-  
19           victed of a criminal violation related to the  
20           Board finding for which the whistleblower  
21           otherwise could receive an award under  
22           this section;

23                   “(iii) to any whistleblower who gains  
24                   the information through the performance  
25                   of an audit of financial statements re-

1           required under the securities laws and for  
2           whom such submission would be contrary  
3           to the requirements of section 10A of the  
4           Securities Exchange Act of 1934 (15  
5           U.S.C. 78j-1); and

6           “(iv) to any whistleblower who fails to  
7           submit information to the Board in such  
8           form as the Board may, by rule, require.

9           “(4) REPRESENTATION.—

10           “(A) PERMITTED REPRESENTATION.—Any  
11           whistleblower who makes a claim for an award  
12           under paragraph (2) may be represented by  
13           counsel.

14           “(B) REQUIRED REPRESENTATION.—

15           “(i) IN GENERAL.—Any whistleblower  
16           who anonymously makes a claim for an  
17           award under paragraph (2) shall be rep-  
18           resented by counsel if the whistleblower  
19           anonymously submits the information upon  
20           which the claim is based.

21           “(ii) DISCLOSURE OF IDENTITY.—  
22           Prior to the payment of an award, a whis-  
23           tleblower shall disclose the identity of the  
24           whistleblower and provide such other infor-

1                   mation as the Board may require, directly  
2                   or through counsel, for the whistleblower.

3                   “(5) NO CONTRACT NECESSARY.—No contract  
4                   with the Board is necessary for any whistleblower to  
5                   receive an award under paragraph (2), unless other-  
6                   wise required by the Board by rule.

7                   “(6) APPEALS.—Any determination made under  
8                   this subsection, including whether, to whom, or in  
9                   what amount to make awards, shall be in the discre-  
10                  tion of the Board. Any such determination, except  
11                  the determination of the amount of an award if the  
12                  award was made in accordance with this paragraph,  
13                  may be appealed to the Commission not more than  
14                  30 days after the determination is issued by the  
15                  Board. The Commission shall review the determina-  
16                  tion made by the Board in accordance with section  
17                  107(c).

18                  “(7) PROTECTION OF WHISTLEBLOWERS.—

19                         “(A) PROHIBITION AGAINST RETALIA-  
20                         TION.—No employer may discharge, demote,  
21                         suspend, threaten, harass, directly or indirectly,  
22                         or in any other manner discriminate against, a  
23                         whistleblower in the terms and conditions of  
24                         employment because of any lawful act done by  
25                         the whistleblower—



1           “(i) in providing information to the  
2 Board in accordance with this subsection;

3           “(ii) in initiating, testifying in, or as-  
4 sisting in any investigation or judicial or  
5 administrative action of the Board based  
6 upon or related to such information;

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

17           “(iv) in providing information regard-  
18 ing any conduct that the whistleblower rea-  
19 sonably believes constitutes a potential vio-  
20 lation of any law, rule, or regulation sub-  
21 ject to the jurisdiction of the Board or the  
22 Commission (including disclosures that are  
23 required or protected under the Sarbanes-  
24 Oxley Act of 2002 or the Securities Ex-  
25 change Act of 1934) to—

1           “(I) a person with supervisory  
2 authority over the whistleblower at the  
3 whistleblower’s employer, where such  
4 employer is an entity registered with  
5 or required to be registered with the  
6 Board, the Commission, a self-regu-  
7 latory organization, or a State securi-  
8 ties commission or office performing  
9 like functions; or

10           “(II) such other person working  
11 for the employer described under sub-  
12 clause (I) who has the authority to in-  
13 vestigate, discover, or terminate mis-  
14 conduct.

15           “(B) ENFORCEMENT OF PROHIBITION  
16 AGAINST RETALIATION.—

17           “(i) CAUSE OF ACTION.—An indi-  
18 vidual who alleges discharge or other dis-  
19 crimination in violation of subparagraph  
20 (A) may bring an action under this para-  
21 graph in the appropriate district court of  
22 the United States for the relief provided in  
23 subparagraph (C).

24           “(ii) SUBPOENAS.—A subpoena re-  
25 quiring the attendance of a witness at a

1 trial or hearing conducted under this sub-  
2 section may be served at any place in the  
3 United States.

4 “(iii) STATUTE OF LIMITATIONS.—

5 “(I) IN GENERAL.—An action  
6 under this paragraph may not be  
7 brought—

8 “(aa) more than 6 years  
9 after the date on which the viola-  
10 tion of subparagraph (A) oc-  
11 curred; or

12 “(bb) more than 3 years  
13 after the date when facts mate-  
14 rial to the right of action are  
15 known or reasonably should have  
16 been known by the employee al-  
17 leging a violation of subpara-  
18 graph (A).

19 “(II) REQUIRED ACTION WITHIN  
20 10 YEARS.—Notwithstanding sub-  
21 clause (I), an action under this para-  
22 graph may not in any circumstance be  
23 brought more than 10 years after the  
24 date on which the violation occurs.

1           “(C) RELIEF.—Relief for an individual  
2 prevailing in an action brought under this para-  
3 graph shall include—

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

7           “(ii) two times the amount of back  
8 pay otherwise owed to the individual, with  
9 interest; and

10           “(iii) compensation for litigation  
11 costs, expert witness fees, and reasonable  
12 attorneys’ fees.

13           “(D) CONFIDENTIALITY.—

14           “(i) IN GENERAL.—Except as pro-  
15 vided in clause (ii), the Board and any of-  
16 ficer or employee of the Board may not  
17 disclose any information, including infor-  
18 mation provided by a whistleblower to the  
19 Board, which could reasonably be expected  
20 to reveal the identity of a whistleblower  
21 unless and until required to be disclosed to  
22 a defendant or respondent in connection  
23 with a public proceeding instituted by the  
24 Commission or any entity described in  
25 clause (iii).

1           “(ii) RULE OF CONSTRUCTION.—  
2           Nothing in this section is intended to limit,  
3           or shall be construed to limit, the ability of  
4           the Attorney General to present such evi-  
5           dence to a grand jury or to share such evi-  
6           dence with potential witnesses or defend-  
7           ants in the course of an ongoing criminal  
8           investigation.

9           “(iii) AVAILABILITY TO GOVERNMENT  
10          AGENCIES.—

11           “(I) IN GENERAL.—Without the  
12           loss of its status as confidential in the  
13           hands of the Board, all information  
14           referred to in clause (i) may, in the  
15           discretion of the Board, when deter-  
16           mined by the Board to be necessary to  
17           accomplish the purposes of this Act  
18           and to protect investors, be made  
19           available to—

20           “(aa) the Attorney General  
21           of the United States;

22           “(bb) an appropriate regu-  
23           latory authority;

24           “(cc) a self-regulatory orga-  
25           nization;

1 “(dd) a State attorney gen-  
2 eral in connection with any crimi-  
3 nal investigation;

4 “(ee) any appropriate State  
5 regulatory authority;

6 “(ff) the Commission;

7 “(gg) a foreign securities  
8 authority; and

9 “(hh) a foreign law enforce-  
10 ment authority.

11 “(II) CONFIDENTIALITY.—

12 “(aa) IN GENERAL.—Each  
13 of the entities described in items  
14 (aa) through (ff) of subclause (I)  
15 shall maintain such information  
16 as confidential in accordance with  
17 the requirements established  
18 under clause (i).

19 “(bb) FOREIGN AUTHORI-  
20 TIES.—Each of the entities de-  
21 scribed in subclauses (gg) and  
22 (hh) of subclause (I) shall main-  
23 tain such information in accord-  
24 ance with such assurances of con-

1                    confidentiality as the Board deter-  
2                    mines appropriate.

3                    “(E) RIGHTS RETAINED.—Nothing in this  
4                    subsection shall be deemed to diminish the  
5                    rights, privileges, or remedies of any whistle-  
6                    blower under any Federal or State law, or  
7                    under any collective bargaining agreement.

8                    “(8) PROVISION OF FALSE INFORMATION.—A  
9                    whistleblower shall not be entitled to an award under  
10                   this section if the whistleblower—

11                    “(A) knowingly and willfully makes any  
12                    false, fictitious, or fraudulent statement or rep-  
13                    resentation; or

14                    “(B) uses any false writing or document  
15                    knowing the writing or document contains any  
16                    false, fictitious, or fraudulent statement or  
17                    entry.

18                    “(9) RULEMAKING AUTHORITY.—The Board  
19                    shall have the authority to issue such rules and  
20                    standards as may be necessary or appropriate to im-  
21                    plement the provisions of this section consistent with  
22                    the purposes of this section.

23                    “(10) COORDINATION.—To the maximum ex-  
24                    tent practicable, the Board shall coordinate with the  
25                    Office of the Whistleblower of the Securities Ex-

1 change Commission in carrying out this sub-  
2 section.”; and

3 (2) in section 109(c)(2) (15 U.S.C. 7219(c)(2)),  
4 by striking “all funds collected” and inserting “at  
5 least 50 percent of funds collected”.

6 **SEC. 3. DETERMINATION OF BUDGETARY EFFECTS.**

7 The budgetary effects of this Act, for the purpose of  
8 complying with the Statutory Pay-As-You-Go Act of 2010,  
9 shall be determined by reference to the latest statement  
10 titled “Budgetary Effects of PAYGO Legislation” for this  
11 Act, submitted for printing in the Congressional Record  
12 by the Chairman of the House Budget Committee, pro-  
13 vided that such statement has been submitted prior to the  
14 vote on passage.

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