

[DISCUSSION DRAFT]

116TH CONGRESS
1ST SESSION

H. R. 3625

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

Ms. GARCIA of Texas introduced the following bill; which was referred to the Committee on _____

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 2019”.

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 \$2,500.

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.—The term ‘whis-
9 tler’ means any individual who provides,
10 or 2 or more individuals acting jointly who pro-
11 vide, information relating to a violation of this
12 Act, the rules of the Board, the provisions of
13 the securities laws relating to the preparation
14 and issuance of audit reports, auditor independ-
15 ence, and the obligations and liabilities of ac-
16 countants with respect thereto, including the
17 rules of the Board issued pursuant to this Act,
18 or professional standards governing auditors
19 and accountants.

20 “(2) AWARDS.—

21 “(A) IN GENERAL.—In any covered dis-
22 ciplinary proceeding, the Board shall pay an
23 award or awards to 1 or more whistleblowers
24 who voluntarily provided original information to
25 the Board that resulted in the board imposing

1 monetary sanctions, in an aggregate amount
2 determined in the discretion of the Board but
3 equal to—

4 “(i) not less than 10 percent, in total,
5 of what has been collected of the monetary
6 sanctions imposed; and

7 “(ii) not more than 50 percent, in
8 total, of what has been collected of the
9 monetary sanctions.

10 “(B) CRITERIA.— In determining the
11 amount of an award made under subparagraph
12 (A), the Commission shall take into consider-
13 ation—

14 “(i) the significance of the informa-
15 tion provided by the whistleblower to the
16 success of the disciplinary proceeding;

17 “(ii) the degree of assistance provided
18 by the whistleblower and any legal rep-
19 resentative of the whistleblower in a dis-
20 ciplinary proceeding; and

21 “(iii) the programmatic interest of the
22 Board in deterring violations by making
23 awards to whistleblowers who provide in-
24 formation that lead to successful enforce-
25 ment.

1 “(C) DENIAL OF AWARD.—No award
2 under subparagraph (A) shall be made—

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

7 “(I) an appropriate regulatory
8 agency (as such term is defined in
9 section 34 of the Securities Exchange
10 Act of 1934);

11 “(II) the Department of Justice;

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

16 “(IV) the Public Company Ac-
17 counting Oversight Board; or

18 “(V) a law enforcement organiza-
19 tion;

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

1 “(iii) to any whistleblower who fails to
2 submit information to the Board in such
3 form as the Board may, by rule, require;

4 “(iv) to any whistleblower who know-
5 ingly and willfully makes any false, ficti-
6 tious, or fraudulent statement or represen-
7 tation; and

8 “(v) to any whistleblower who uses
9 any false writing or document knowing the
10 writing or document contains any false, fic-
11 titious, or fraudulent statement or entry.

12 “(D) PAYMENT OF AWARDS.—Any amount
13 paid under subparagraph (A) shall be paid from
14 any funds generated from the collection of mon-
15 etary sanctions.

16 “(3) REPRESENTATION.—

17 “(A) PERMITTED REPRESENTATION.—Any
18 whistleblower who makes a claim for an award
19 under paragraph (2) may be represented by
20 counsel.

21 “(B) REQUIRED REPRESENTATION.—

22 “(i) IN GENERAL.—Any whistleblower
23 who anonymously makes a claim for an
24 award under paragraph (2) shall be rep-
25 resented by counsel if the whistleblower

1 anonymously submits the information upon
2 which the claim is based.

3 “(ii) DISCLOSURE OF IDENTITY.—
4 Prior to the payment of an award, a whis-
5 tleblower shall disclose the identity of the
6 whistleblower and provide such other infor-
7 mation as the Board may require, directly
8 or through counsel, for the whistleblower.

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

13 “(5) APPEALS.—Any determination made under
14 this subsection, including whether, to whom, or in
15 what amount to make awards, shall be in the discre-
16 tion of the Board. Any such determination, except
17 the determination of the amount of an award if the
18 award was made in accordance with this paragraph,
19 may be appealed to the Commission not more than
20 30 days after the determination is issue by the
21 Board. The Commission shall review the determina-
22 tion made by the Board in accordance with section
23 107(c).

24 “(6) PROTECTION OF WHISTLEBLOWERS.—

1 “(A) PROHIBITION AGAINST RETALIA-
2 TION.—No current or former employer may dis-
3 charge, demote, suspend, threaten, blacklist,
4 harass, directly or indirectly, actively or pas-
5 sively, or in any other manner discriminate
6 against any whistleblower in the terms and con-
7 ditions of employment, including compensation,
8 because of any lawful act done by the whistle-
9 blower in—

10 “(i) providing information to the
11 Board in accordance with this subsection;

12 “(ii) initiating, testifying in, or assist-
13 ing in any investigation or administrative
14 action of the Board based upon or related
15 to such information;

16 “(iii) making disclosures that are re-
17 quired or protected under the Sarbanes-
18 Oxley Act of 2002 (15 U.S.C. 7201 et
19 seq.), the Securities Exchange Act of 1934
20 (15 U.S.C. 78a et seq.), including section
21 10A(m) of such Act (15 U.S.C. 78f(m)),
22 section 1513(e) of title 18, United States
23 Code, and any other law, rule, or regula-
24 tion subject to the jurisdiction of the Com-
25 mission; and

1 “(iv) in providing information regard-
2 ing any conduct that the whistleblower rea-
3 sonably believes constitutes a violation of
4 any law, rule, or regulation subject to the
5 jurisdiction of the Board to—

6 “(I) a person with supervisory
7 authority over the whistleblower at the
8 whistleblower’s employer, where such
9 employer is an entity registered with
10 or required to be registered with the
11 Commission, a self-regulatory organi-
12 zation, or a State securities commis-
13 sion or office performing like func-
14 tions; or

15 “(II) such other person working
16 for the employer described under sub-
17 clause (I) who has the authority to in-
18 vestigate, discover, or terminate mis-
19 conduct.

20 “(B) ENFORCEMENT OF PROHIBITION
21 AGAINST RETALIATION.—Any whistleblower who
22 alleges discharge or other discrimination or is
23 otherwise aggrieved by an employer in violation
24 of subparagraph (A) may seek relief—

1 “(i) by filing a complaint with the
2 Secretary of Labor; or

3 “(ii) if the Secretary has not issued a
4 final decision within 180 days of the filing
5 of the complaint and there is no showing
6 that such delay is due to the bad faith of
7 the claimant, bringing an action at law or
8 equity for de novo review in the appro-
9 priate district court of the United States,
10 which shall have jurisdiction over such an
11 action without regard to the amount in
12 controversy.

13 “(C) PROCEDURE.—

14 “(i) IN GENERAL.—An action under
15 subparagraph (B)(ii) shall be governed
16 under the rules and procedures set forth in
17 section 42121(b) of title 49, United States
18 Code.

19 “(ii) EXCEPTION.—Notification made
20 under section 42121(b)(1) of title 49,
21 United States Code, shall be made to the
22 person named in the complaint and to the
23 employer.

24 “(iii) BURDENS OF PROOF.—An ac-
25 tion brought under subparagraph (B)(ii)

1 shall be governed by the legal burdens of
2 proof set forth in section 42121(b) of title
3 49, United States Code.

4 “(iv) STATUTE OF LIMITATIONS.—An
5 action under subparagraph (B) shall be
6 commenced not later than 180 days after
7 the date on which the violation occurs, or
8 after the date on which the whistleblower
9 became aware of the violation.

10 “(v) JURY TRIAL.—A party to an ac-
11 tion brought under subparagraph (B) shall
12 be entitled to trial by jury.

13 “(D) REMEDIES.—Any whistleblower who
14 prevails in any action brought under this para-
15 graph shall be entitled to all relief necessary to
16 make the whistleblower whole, including—

17 “(i) reinstatement with the same se-
18 niority status that the whistleblower would
19 have had, but for the discrimination;

20 “(ii) 2 times the amount of back pay
21 otherwise owed to the whistleblower, with
22 interest;

23 “(iii) consequential and compensatory
24 damages;

1 “(iv) special damages, including dam-
2 ages for emotional distress and
3 reputational harm; and

4 “(v) compensation for litigation costs,
5 expert witness fees, and reasonable attor-
6 neys’ fees.

7 “(E) CONFIDENTIALITY.—

8 “(i) IN GENERAL.—Except as pro-
9 vided in clause (ii), the Board and any of-
10 ficer or employee of the Board may not
11 disclose any information without the writ-
12 ten consent of the whistleblower, including
13 information provided by the whistleblower
14 to the Board, which could reasonably be
15 expected to reveal the identity of the whis-
16 tleblower unless and until the Board is re-
17 quired to disclose such information to a de-
18 fendant or respondent in connection with a
19 public proceeding instituted by the Com-
20 mission or any entity described in clause
21 (iv).

22 “(ii) NOTICE.—If the Board shall, be-
23 fore making information referred to in
24 clause (i) available to a defendant or re-
25 spondent in connection with a public pro-

1 ceeding instituted by the Commission or
2 any entity described in clause (iv), provide
3 notice to the whistleblower that such infor-
4 mation is being made available.

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

13 “(iv) AVAILABILITY TO GOVERNMENT
14 AGENCIES.—

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

24 “(aa) the Attorney General
25 of the United States;

1 “(bb) an appropriate regu-
2 latory authority;

3 “(cc) a self-regulatory orga-
4 nization;

5 “(dd) a State attorney gen-
6 eral in connection with any crimi-
7 nal investigation;

8 “(ee) any appropriate State
9 regulatory authority;

10 “(ff) the Commission;

11 “(gg) a foreign securities
12 authority; and

13 “(hh) a foreign law enforce-
14 ment authority.

15 “(II) CONFIDENTIALITY.—Each
16 of the entities described in items (aa)
17 through (ff) of subclause (I) shall
18 maintain such information as con-
19 fidential in accordance with the re-
20 quirements established under clause
21 (i) and each of the entities described
22 in subclauses (gg) and (hh) of sub-
23 clause (I) shall maintain such infor-
24 mation in accordance with such assur-

1 ances of confidentiality as the Board
2 determines appropriate.

3 “(III) NOTICE.—If the Board
4 makes information referred to in
5 clause (i) available pursuant to sub-
6 clause (I), the Board shall

7 “(F) RIGHTS RETAINED.—Nothing in this
8 subsection shall be deemed to diminish the
9 rights, privileges, or remedies of any whistle-
10 blower under any Federal or State law, or
11 under any collective bargaining agreement.

12 “(G) UNENFORCEABILITY.—

13 “(i) WAIVER OF RIGHTS AND REM-
14 EDIES.—The rights and remedies provided
15 for in this section may not be waived by
16 any condition of employment, including a
17 predispute arbitration agreement.

18 “(ii) REQUIRED ARBITRATION.—Any
19 provision of a predispute arbitration agree-
20 ment that requires arbitration of a dispute
21 arising under this paragraph shall be in-
22 valid and unenforceable.”; and

23 (2) in section 109(c)(2) (15 U.S.C. 7219(c)(2))
24 by striking “all funds collected” and inserting “at
25 least 50 percent of funds collected”.