

Congress Must Protect Consumer Fraud Whistleblowers

By **Stephen Kohn** (October 11, 2023)

The Dodd-Frank Wall Street Reform and Consumer Protection Act included major enhancements to federal laws designed to protect investors and consumers.

Congress' sweeping reform bill, enacted in the wake of the 2008 financial crisis, included new protections for investors under the Securities Exchange Act, including a new whistleblower reward law.[1]

It also included the Consumer Financial Protection Act of 2010, which targeted fraudsters who preyed on citizens vulnerable to consumer frauds.

Unfortunately, unlike these protections for Wall Street investors, the CFPA does not include similar whistleblower protections for those reporting consumer frauds targeting the middle class.

Congress is trying to fix this massive loophole with a new whistleblower act introduced earlier this year.

The CFPA, enacted as Title X of the Dodd-Frank Act, was designed to do for consumers what the U.S. Securities and Exchange Commission does for investors: prohibit unfair, deceptive and abusive practices stealing billions of dollars from American consumers every year.[2]

The scope of frauds covered[3] under the CFPA include:

- Abusive debt collection;
- Payday loan violations;
- Reverse mortgage abuses;
- Elder financial frauds;
- Identity theft;
- Phishing; and
- Money transfer frauds.

The CFPA established the Consumer Financial Protection Bureau to enforce laws critical to protect average Americans from frauds, including the:

- Equal Credit Opportunity Act;
- Fair Credit Billing Act;
- Fair Credit Reporting Act;
- Homeowners Protection Act;
- Fair Debt Collection Practices Act;
- Home Mortgage Disclosure Act;
- Home Ownership and Equity Protection Act;
- Truth in Lending Act; and
- Truth in Savings Act.



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The scope of these laws, and the need to ensure that fraudsters who violate them are detected and prosecuted, speaks for itself.

The lack of a Dodd-Frank style whistleblower reward law, with its proven ability to incentivize, compensate and protect whistleblowers, places every American consumer at risk.

It undermines the ability to enforce the CFPA, forcing the bureau to perform its job with one hand tied behind its back, lacking the ability to properly compensate its key informants.

The leadership of the CFPB, along with advocates for consumer protection, recognize that the bureau is missing a critical tool: The same whistleblower reward program that has revolutionized the SEC's ability to enforce securities fraud laws.

This spring, the Financial Compensation for CFPB Whistleblowers Act was introduced in both the U.S. Senate and the U.S. House of Representatives.[4]

The Senate version of the act is sponsored by Sen. Catherine Cortez Masto, D-Nev., and the House version of the act is sponsored by Rep. Al Green, D-Texas.

The goal of the law was simple: "Whistleblowers play a critical role by reporting wrongdoing and fraud schemes targeting our communities," Cortez Masto explained to the National Whistleblower Center. "This legislation will protect these individuals, making it easier for them to come forward" and for the CFPB to go after bad actors.

A whistleblower program covering violations of the CFPA would protect the public from insurance fraud, credit fraud, investment fraud, identity theft, mortgage fraud and other consumer fraud schemes, which all too often go unchecked.

The CFPB Whistleblowers Act virtually copies the Dodd-Frank whistleblower framework, recognizing it has been extraordinarily successful in the fight against investor fraud. In fact, the SEC's whistleblower program is generally considered the gold standard of whistleblower award programs globally.

The program has proved immensely effective at incentivizing insiders with high-quality information on fraud and misconduct to come forward and cooperate with investigators.

Like the SEC's whistleblower program, the CFPB Whistleblowers Act would provide qualified whistleblowers[5] with a financial reward of 10%-30% of the sanctions recovered from a tip.

It also similarly allows whistleblowers to retain independent counsel in order to file anonymously.

Importantly, the final section of the bill ensures that predispute arbitration agreements would not prevent a whistleblower from contacting the CFPB with a concern.

The primary obstacle to this act is not doubt about whether whistleblower reward laws work; political leaders from both sides of the aisle have embraced and celebrated whistleblower laws as a cornerstone of democracy.

For example, the success of the SEC's whistleblower program has been trumpeted by both

Democratic and Republican appointees.

In 2020, then-SEC Chair Jay Clayton, a President Donald Trump nominee, stated, "Over the past ten years, the whistleblower program has been a critical component of the Commission's efforts to detect wrongdoing and protect investors and the marketplace, particularly where fraud is well-hidden or difficult to detect." [6]

In 2022, current SEC Chair Gary Gensler, a President Joe Biden nominee, similarly stated that the program "has greatly aided the Commission's work to protect investors." [7]

He explained that "[i]n the years since the program was established, the SEC has used whistleblower information to obtain sanctions of over \$5 billion from securities law violators, return over \$1.3 billion to harmed investors, and award over \$1.3 billion to whistleblowers for their service."

There is no justification for slowing down the passage of the CFPB Whistleblowers Act.

Ironically, the only possible reason could be fear of its effectiveness; Wall Street despises the bureau's vigilance in taking on big banks.

The CFPB already maintains a public database of complaints received against financial companies, and these companies understand the bureau would only receive more complaints once informants are armed with the incentives and protections granted by a Dodd-Frank-modeled whistleblower program.

The only thing that surpasses Wall Street's resentment toward the CFPB is its general animosity toward whistleblowers — whistleblowers who have the audacity to step forward and defend the rights of consumers pose a threat to big banks.

Fraud in the banking system is rampant, and the CFPB has already diligently held banks accountable for engaging in fraud.

On Aug. 1, Jay Patterson, a victim of consumer fraud, initiated a class action in the U.S. District Court for the Northern District of California against Wells Fargo & Co. after an unauthorized account was opened using his name.

According to an NBC report on the suit, over 40 customers notified the CFPB of unauthorized accounts opened by Wells Fargo in just the time that Patterson's account was open. [8]

This form of identity theft can be used to launder money; finance terrorism; or defraud financial institutions, government agencies or individuals, and occurs when banks willingly or, through negligence, violate their legal obligations to verify customers' identities.

The Patterson suit also follows Wells Fargo's December 2022 settlement with the CFPB for \$3.7 billion over allegations of consumer abuses involving 16 million accounts. [9]

Recognizing the urgent need to pass this legislation, Green said to the National Whistleblower Center, "[t]he Consumer Financial Protection Bureau is a critical watchdog of our financial system, one that has already returned billions of dollars to consumers who have been harmed by financial bad actors."

Whistleblower award programs are a proven cornerstone to fighting fraud. We are using the full force of the law to protect investors. Don't consumers deserve the same?

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Disclosure: Stephen Kohn is the chairman of the board at the National Whistleblower Center.

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[1] <https://kkc.com/frequently-asked-questions/dodd-frank-act-whistleblower-protections-and-rewards/>.

[2] <https://kkc.com/wp-content/uploads/2023/03/DoddFrankAct.pdf>.

[3] <https://www.consumerfinance.gov/consumer-tools/>.

[4] <https://whistleblowersblog.org/whistleblower-legislation/bill-sets-up-whistleblower-incentives-for-cfpb/>.

[5] <https://kkc.com/frequently-asked-questions/sec-whistleblower-program/>.

[6] <https://www.sec.gov/news/public-statement/clayton-whistleblower-2020-09-23>.

[7] <https://www.sec.gov/news/statement/gensler-statement-whistleblower-program-082622>.

[8] <https://www.nbcnews.com/news/investigations/phony-bank-accounts-resurface-wells-fargo-twist-rcna98005>.

[9] <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-wells-fargo-to-pay-37-billion-for-widespread-mismanagement-of-auto-loans-mortgages-and-deposit-accounts/>.