

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3625
OFFERED BY MS. GARCIA OF TEXAS**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “PCAOB Whistleblower
3 Protection Act of 2019”.

4 SEC. 2. WHISTLEBLOWER INCENTIVES AND PROTECTION.

5 The Sarbanes-Oxley Act of 2002 is amended—

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

8 “(f) WHISTLEBLOWER INCENTIVES AND PROTEC-
9 TION.—

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

12 “(A) COVERED PROCEEDING.—The term
13 ‘covered proceeding’ means any disciplinary
14 proceeding by the Board initiated after the date
15 of the enactment of this subsection that results
16 in monetary sanctions exceeding \$2,500.

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

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

3 “(ii) is not known to the Board from
4 any other source, unless the whistleblower
5 is the original source of the information;
6 and

7 “(iii) is not exclusively derived from
8 an allegation made in a disciplinary pro-
9 ceeding, in a judicial or administrative
10 hearing, in a governmental report, hearing,
11 audit, or investigation, or from the news
12 media, unless the whistleblower is a source
13 of the information.

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

19 “(D) WHISTLEBLOWER.—The term ‘whis-
20 tleblower’ means any individual who provides,
21 or 2 or more individuals acting jointly who pro-
22 vide, information relating to a violation of this
23 Act, the rules of the Board, the provisions of
24 the securities laws relating to the preparation
25 and issuance of audit reports, auditor independ-

1 ence, and the obligations and liabilities of ac-
2 countants with respect thereto, including the
3 rules of the Board issued pursuant to this Act,
4 or professional standards governing auditors
5 and accountants.

6 “(2) AWARDS.—

7 “(A) IN GENERAL.—In any covered dis-
8 ciplinary proceeding, the Board shall pay an
9 award or awards to 1 or more whistleblowers
10 who voluntarily provided original information to
11 the Board that resulted in the board imposing
12 monetary sanctions, in an aggregate amount
13 determined in the discretion of the Board but
14 equal to—

15 “(i) not less than 10 percent, in total,
16 of what has been collected of the monetary
17 sanctions imposed; and

18 “(ii) not more than 50 percent, in
19 total, of what has been collected of the
20 monetary sanctions.

21 “(B) CRITERIA.— In determining the
22 amount of an award made under subparagraph
23 (A), the Commission shall take into consider-
24 ation—

1 “(i) the significance of the informa-
2 tion provided by the whistleblower to the
3 success of the disciplinary proceeding;

4 “(ii) the degree of assistance provided
5 by the whistleblower and any legal rep-
6 resentative of the whistleblower in a dis-
7 ciplinary proceeding; and

8 “(iii) the programmatic interest of the
9 Board in deterring violations by making
10 awards to whistleblowers who provide in-
11 formation that lead to successful enforce-
12 ment.

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

15 “(i) to any whistleblower who is, or
16 was at the time the whistleblower acquired
17 the original information submitted to the
18 Board, a member, officer, or employee of—

19 “(I) an appropriate regulatory
20 agency (as such term is defined in
21 section 34 of the Securities Exchange
22 Act of 1934);

23 “(II) the Department of Justice;

24 “(III) a self-regulatory organiza-
25 tion (as such term is defined in sec-

1 tion 34 of the Securities Exchange
2 Act of 1934);

3 “(IV) the Public Company Ac-
4 counting Oversight Board; or

5 “(V) a law enforcement organiza-
6 tion;

7 “(ii) to any whistleblower who is con-
8 victed of a criminal violation related to the
9 Board finding for which the whistleblower
10 otherwise could receive an award under
11 this section;

12 “(iii) to any whistleblower who fails to
13 submit information to the Board in such
14 form as the Board may, by rule, require;

15 “(iv) to any whistleblower who know-
16 ingly and willfully makes any false, ficti-
17 tious, or fraudulent statement or represen-
18 tation; and

19 “(v) to any whistleblower who uses
20 any false writing or document knowing the
21 writing or document contains any false, fic-
22 titious, or fraudulent statement or entry.

23 “(D) PAYMENT OF AWARDS.—Any amount
24 paid under subparagraph (A) shall be paid from

1 any funds generated from the collection of mon-
2 etary sanctions.

3 “(3) REPRESENTATION.—

4 “(A) PERMITTED REPRESENTATION.—Any
5 whistleblower who makes a claim for an award
6 under paragraph (2) may be represented by
7 counsel.

8 “(B) REQUIRED REPRESENTATION.—

9 “(i) IN GENERAL.—Any whistleblower
10 who anonymously makes a claim for an
11 award under paragraph (2) shall be rep-
12 resented by counsel if the whistleblower
13 anonymously submits the information upon
14 which the claim is based.

15 “(ii) DISCLOSURE OF IDENTITY.—
16 Prior to the payment of an award, a whis-
17 tleblower shall disclose the identity of the
18 whistleblower and provide such other infor-
19 mation as the Board may require, directly
20 or through counsel, for the whistleblower.

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

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

12 “(6) PROTECTION OF WHISTLEBLOWERS.—

13 “(A) PROHIBITION AGAINST RETALIA-
14 TION.—No current or former employer may dis-
15 charge, demote, suspend, threaten, blacklist,
16 harass, directly or indirectly, actively or pas-
17 sively, or in any other manner discriminate
18 against any whistleblower in the terms and con-
19 ditions of employment, including compensation,
20 because of any lawful act done by the whistle-
21 blower in—

22 “(i) providing information to the
23 Board in accordance with this subsection;

24 “(ii) initiating, testifying in, or assist-
25 ing in any investigation or administrative

1 action of the Board based upon or related
2 to such information;

3 “(iii) making disclosures that are re-
4 quired or protected under the Sarbanes-
5 Oxley Act of 2002 (15 U.S.C. 7201 et
6 seq.), the Securities Exchange Act of 1934
7 (15 U.S.C. 78a et seq.), including section
8 10A(m) of such Act (15 U.S.C. 78f(m)),
9 section 1513(e) of title 18, United States
10 Code, and any other law, rule, or regula-
11 tion subject to the jurisdiction of the Com-
12 mission; and

13 “(iv) in providing information regard-
14 ing any conduct that the whistleblower rea-
15 sonably believes constitutes a violation of
16 any law, rule, or regulation subject to the
17 jurisdiction of the Board to—

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

1 sion or office performing like func-
2 tions; or

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

8 “(B) ENFORCEMENT OF PROHIBITION
9 AGAINST RETALIATION.—Any whistleblower who
10 alleges discharge or other discrimination or is
11 otherwise aggrieved by an employer in violation
12 of subparagraph (A) may seek relief—

13 “(i) by filing a complaint with the
14 Secretary of Labor; or

15 “(ii) if the Secretary has not issued a
16 final decision within 180 days of the filing
17 of the complaint and there is no showing
18 that such delay is due to the bad faith of
19 the claimant, bringing an action at law or
20 equity for de novo review in the appro-
21 priate district court of the United States,
22 which shall have jurisdiction over such an
23 action without regard to the amount in
24 controversy.

25 “(C) PROCEDURE.—

1 “(i) IN GENERAL.—An action under
2 subparagraph (B)(ii) shall be governed
3 under the rules and procedures set forth in
4 section 42121(b) of title 49, United States
5 Code.

6 “(ii) EXCEPTION.—Notification made
7 under section 42121(b)(1) of title 49,
8 United States Code, shall be made to the
9 person named in the complaint and to the
10 employer.

11 “(iii) BURDENS OF PROOF.—An ac-
12 tion brought under subparagraph (B)(ii)
13 shall be governed by the legal burdens of
14 proof set forth in section 42121(b) of title
15 49, United States Code.

16 “(iv) STATUTE OF LIMITATIONS.—An
17 action under subparagraph (B) shall be
18 commenced not later than 180 days after
19 the date on which the violation occurs, or
20 after the date on which the whistleblower
21 became aware of the violation.

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

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

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

8 “(ii) 2 times the amount of back pay
9 otherwise owed to the whistleblower, with
10 interest;

11 “(iii) consequential and compensatory
12 damages;

13 “(iv) special damages, including dam-
14 ages for emotional distress and
15 reputational harm; and

16 “(v) compensation for litigation costs,
17 expert witness fees, and reasonable attor-
18 neys’ fees.

19 “(E) CONFIDENTIALITY.—

20 “(i) IN GENERAL.—Except as pro-
21 vided in clause (ii), the Board and any of-
22 ficer or employee of the Board may not
23 disclose any information without the writ-
24 ten consent of the whistleblower, including
25 information provided by the whistleblower

1 to the Board, which could reasonably be
2 expected to reveal the identity of the whis-
3 tleblower unless and until the Board is re-
4 quired to disclose such information to a de-
5 fendant or respondent in connection with a
6 public proceeding instituted by the Com-
7 mission or any entity described in clause
8 (iv).

9 “(ii) NOTICE.—If the Board shall, be-
10 fore making information referred to in
11 clause (i) available to a defendant or re-
12 spondent in connection with a public pro-
13 ceeding instituted by the Commission or
14 any entity described in clause (iv), provide
15 notice to the whistleblower that such infor-
16 mation is being made available.

17 “(iii) RULE OF CONSTRUCTION.—
18 Nothing in this section is intended to limit,
19 or shall be construed to limit, the ability of
20 the Attorney General to present such evi-
21 dence to a grand jury or to share such evi-
22 dence with potential witnesses or defend-
23 ants in the course of an ongoing criminal
24 investigation.

1 “(iv) AVAILABILITY TO GOVERNMENT
2 AGENCIES.—

3 “(I) IN GENERAL.—Without the
4 loss of its status as confidential in the
5 hands of the Board, all information
6 referred to in clause (i) may, in the
7 discretion of the Board, when deter-
8 mined by the Board to be necessary to
9 accomplish the purposes of this Act
10 and to protect investors, be made
11 available to—

12 “(aa) the Attorney General
13 of the United States;

14 “(bb) an appropriate regu-
15 latory authority;

16 “(cc) a self-regulatory orga-
17 nization;

18 “(dd) a State attorney gen-
19 eral in connection with any crimi-
20 nal investigation;

21 “(ee) any appropriate State
22 regulatory authority;

23 “(ff) the Commission;

24 “(gg) a foreign securities
25 authority; and

1 “(hh) a foreign law enforce-
2 ment authority.

3 “(II) CONFIDENTIALITY.—Each
4 of the entities described in items (aa)
5 through (ff) of subclause (I) shall
6 maintain such information as con-
7 fidential in accordance with the re-
8 quirements established under clause
9 (i) and each of the entities described
10 in subclauses (gg) and (hh) of sub-
11 clause (I) shall maintain such infor-
12 mation in accordance with such assur-
13 ances of confidentiality as the Board
14 determines appropriate.

15 “(III) NOTICE.—If the Board
16 makes information referred to in
17 clause (i) available pursuant to sub-
18 clause (I), the Board shall

19 “(F) RIGHTS RETAINED.—Nothing in this
20 subsection shall be deemed to diminish the
21 rights, privileges, or remedies of any whistle-
22 blower under any Federal or State law, or
23 under any collective bargaining agreement.

24 “(G) UNENFORCEABILITY.—

1 “(i) WAIVER OF RIGHTS AND REM-
2 EDIES.—The rights and remedies provided
3 for in this section may not be waived by
4 any condition of employment, including a
5 predispute arbitration agreement.

6 “(ii) REQUIRED ARBITRATION.—Any
7 provision of a predispute arbitration agree-
8 ment that requires arbitration of a dispute
9 arising under this paragraph shall be in-
10 valid and unenforceable.

11 “(7) COORDINATION.—To the maximum extent
12 practicable, the Board shall coordinate with the Of-
13 fice of the Whistleblower of the Securities Exchange
14 Commission in carrying out this subsection.”; and

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

