Protecting Whistleblowers

Angela Canterbury
Public Citizen

We would have had more warning of the collapse of Wall Street and the subsequent economy crisis if there had been more protections and avenues for disclosure for employees willing to raise concerns. Whistleblowers are critical to combating fraud, gross mismanagement, and other institutional misconduct, but few workers come forward if they fear losing their job, getting demoted, or facing other forms of retaliation. Protections for whistleblowers and effective systems for whistleblowing in the financial sector and federal government are necessary for real oversight and accountability.

The effectiveness of whistleblowers in combating fraud and misconduct is evident. PriceWaterhouseCoopers surveyed 5,400 companies in 40 countries and found that whistleblowers detected more fraud than auditors or law enforcement officers. It also stressed the importance of "whistle-blowing systems" and listed "safeguard employees who report misconduct against any form of retaliation (i.e., threats, harassment and demotion)" as the first requirement for a whistleblower program.[1]

Under the False Claims Act,[2] the law that encourages private sector whistleblowers to file lawsuits challenging fraud in government contracts, the government's civil recoveries of fraud in government contracts has substantially increased to more than $20 billion since the law was strengthened in 1986. According to the United States Department of Justice, whistleblower disclosures now account for the majority of fraud recoveries from dishonest contractors—$1.45 of the $2 billion recovered in 2007 alone.[3]

Since 2000 Congress has enacted or strengthened whistleblower protections in six laws for private sector employees. They include consumer product manufacturing and retail commerce, railroads, the trucking industry, regulated securities companies, metropolitan transit systems, defense contractors, and all entities receiving stimulus funds. While these laws provide important incentives and protections for disclosure of wrongdoing, they do not adequately cover employees and contractors in the financial industry.

The Sarbanes-Oxley Act or "SOX" was a pioneering whistleblower law enacted in 2002.[4] However, SOX provides protection only for employees and contractors for

[1] PriceWaterhouseCoopers, *Economic crime: people, culture and controls: The 4th biennial Global Economic Crime Survey,* 2007, available at http://www.pwc.com/extweb/pwcpublications.nsf/docid/1E0890149345149E8525737000705AF1.

[2] False Claims Act, 31 U.S.C. § 3730.

[3] U.S. Department of Justice, Press Release: *Justice Department Recovers $2 Billion for Fraud Against the Government in Fy 2007; More Than $20 Billion Since 1986,* Nov. 1, 2007, available at http://www.whistleblowers.org/storage/whistleblowers/documents/doj%20fca%20statistics%202007.pdf.

[4] 18 U.S.C. § 15 ("Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing

businesses subject to the Securities and Exchange Act. The only protected disclosures under SOX are reports of possible violations of a federal rule or law that could negatively impact on shareholders and investors. An employee is not protected for raising a company's possible violations of state law or its own internal policies.

Risk-taking in the financial industry will quickly outpace regulatory coverage unless bank branch, call-center, and other financial sector employees and contractors can challenge bad practices as they develop and direct regulators to problems. The federal government needs to hear from and protect finance sector employees who object to bad practices that they believe violate the law, are unfair or deceptive, or threaten the public welfare.

But for real accountability federal regulators also must have adequate protections for blowing the whistle. The current system for protecting federal whistleblowers is badly broken and outmoded. The Whistleblower Protection Act (WPA), aptly nicknamed the Taxpayer Protection Act, has failed to live up to the intent of Congress. Not all federal employees are covered, nor are the fleets of federal contractors who increasingly manage our public affairs and funds. Those who are covered under the law face a flawed and politicized administrative process for reviewing whistleblower disclosures and claims, and lack normal access to court. In addition, the only court authorized to hear claims of retaliation by federal employees, the U.S. Court of Appeals for the Federal Circuit, has a record of ruling against whistleblowers and eroding the law. The result is that the law intended to protect federal workers and tax dollars is virtually useless.[5]

Adequate oversight for consumers, investors and taxpayers requires safe channels to disclose wrongdoing for all workers and contractors for the federal government, the financial sector, the Federal Reserve System, and government sponsored enterprises, such as Fannie Mae and Freddie Mac.

We support the following safeguards for whistleblowers to encourage disclosure of wrongdoing to help protect taxpayers, consumers and investors:

- Provide all employees and contractors in the private-sector financial industry with the rights at least as strong as those recently enacted for the approximately 20 million workers in consumer product manufacturing, as well as workers for all entities receiving stimulus funds.

- Strengthen and modernize the Whistleblower Protection Act to ensure all federal employees and contractors can safely warn us of waste, fraud and abuse in the financial sector, including providing access to jury trials as a final remedy when administrative process fails to resolve claims of retaliation.

- Extend strong, best-practices whistleblower protections to employees and contractors of the Federal Reserve System and government sponsored enterprises, such as Fannie Mae and Freddie Mac.

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to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.").

[5] Testimony of Angela Canterbury before the House Government Reform Committee on H.R. 1507, pages 5-6, available at http://www.citizen.org/congress/govtaccount/articles.cfm?ID=18609.