

The WARN Act: Expanding Protections for Whistleblowers

Rep. Elijah E. Cummings and Senator Tammy Baldwin

The Whistleblower Augmented Reward and Non-Retaliation Act of 2016 (WARN Act) would expand protections for those who put their careers at risk to blow the whistle on financial crimes at Wall Street banks. Financial whistleblowers are critical to effective white collar law enforcement by bringing to light corporate malfeasance and gross negligence.

Although the Dodd-Frank Act expanded protections for financial whistleblowers in 2010 by providing protections for whistleblowers who report directly to the SEC and CFTC, additional measures are needed to address new actions banks have taken to circumvent the law.

Wall Street banks may prevent employees from exercising their current rights, and may require employees to waive their whistleblower rights as a condition of their employment.

In addition, current law does not provide adequate protections to financial whistleblowers at prudential regulators. For example, a Federal Reserve whistleblower was not protected by current law when she was fired for refusing to change a supervisory report at her superiors' request.

The WARN Act would significantly strengthen protections for whistleblowers in the financial sector by:

❖ Expanding Employment Protections

- Prohibiting employers from forcing whistleblowers to waive their rights or disclose their communications with the government.
- Safeguarding whistleblowers from retaliation if they refuse to participate in activities they believe violate the law.
- Providing whistleblower protections to regulators who disclose information relating to a bank's safety and soundness.

❖ Providing Legal Procedures that Protect Whistleblowers

- Applying procedures, evidentiary standards, and burdens of proof that allow whistleblowers to show that their exercise of protected behavior was a contributing factor leading to unfavorable personnel actions.
- Harmonizing whistleblower awards with those under the Dodd-Frank Act so whistleblowers are eligible to receive between 10 percent and 30 percent of penalties and recoveries imposed as a result of the information they provide.
- Providing civil remedies and punitive damages, including reinstatement, twice the amount of accrued back pay (with interest), and further compensation for any special damages such as litigation costs.

The WARN Act has been endorsed by the Government Accountability Project, Public Citizen, Americans for Financial Reform, the Communication Workers of America, and other organizations.