

December 12, 2010

The Honorable Scott Garrett
Chairman
Subcommittee on Capital Markets and Government Sponsored Enterprises
House Financial Services Committee
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
Subcommittee on Capital Markets and Government Sponsored Enterprises
House Financial Services Committee
2344 Rayburn House Office Building
Washington, DC 20515

Dear Representatives Garrett and Waters:

I am writing to express my concerns about H.R. 2483, the “Whistleblower Improvement Act of 2011” being considered by the Subcommittee on Capital Markets and Government Sponsored Enterprises.

The legislation, as now drafted, would work to undermine fraud-fighting efforts passed and implemented with bipartisan support in the last Congress. Specifically, the legislation would:

1. **Expose every SEC whistleblower to isolation, humiliation, retaliation and termination** by requiring them to tell their bosses and employers about fraud in the company even before they reported the fraud to the SEC. This provision seems to be based on the very mistaken notion that massive corporate frauds are mistakes rather than core business practices. For example, if one of Bernie Madoff’s employees became suspicious and went to the firm’s Chief Compliance Officer, Peter Madoff, Bernie’s younger brother, how far would that complaint have gotten? When Sherron Watkins, the Enron whistleblower approached her Chairman, Ken Lay, with allegations of criminal accounting fraud at the company she was scheduled for termination by him less than a week later. The big dangerous frauds are all command sponsored by the CEO, CFO and General Counsel so reporting them up the chain of command only gets the whistleblower a ticket out of his or her job. By comparison, reporting instances where someone is stealing from the company is usually rewarded. Congress needs to know the

difference between mere employee theft and massive corporate theft. One harms profits while the other kills companies.

2. **Remove the guarantee of a minimum whistleblower award**, thereby removing any and all assurance that, even if massive fraud is found, the whistleblower and his or her lawyer would be compensated for the risk, lost income, lost future wages, denied promotions, and time costs of filing and pursuing a whistleblower case. This provision is clearly designed to discourage whistle blowing by skewing the risk and reward calculation that a whistleblower will necessarily make before filing a case with the SEC. As rewards go down and risks go up, fewer whistleblowers will come forward and fraud will continue unabated at a huge potential cost to taxpayers and shareholders. When management led fraud schemes are allowed to get big: they destroy companies as they did at Enron, Worldcom, Global Crossing, Adelphia, Arthur Anderson and so many others. Tens of thousands of employees get tossed onto the unemployment line, pensions are bankrupted, and shareholders wiped out. We need to stop these schemes while they are still small and manageable. If we don't, shame on us, we get what we deserve.

3. **Would exclude those who are "just following orders" from receiving a whistleblower award**, even if they do not plan or design a fraud, and have no real power to stop a fraud other than to report it to the SEC. The bill's sweeping definition of "culpable" to include those who "participated" seems to be designed to discourage those who are *most* likely to have the best information about a fraud from ever coming forward. The current system whereby the planners and architects of the fraud scheme are ineligible for rewards is fair and reasonable. Thousands and thousands of American citizens were actively engaged in mortgage fraud ranging from brokers, appraisers, lenders, ratings agencies, government sponsored loan guarantors like Fannie Mae and Freddie Mac, and the Wall Street investment banks. This cost taxpayers untold trillions in government bailouts. Wouldn't it make more sense to encourage these sorts of folks to come forward and blow the whistle on frauds while they are still a manageable size and at far less cost to society? Angelo Mozzillo at Countrywide Financial had thousands of employees, any one of whom would have made a great whistleblower that could have saved US taxpayers tens of billions of dollars in bailout money just for that ill-fated company and its successor, Bank of America. Fannie Mae and Freddie Mac were cooking their books and willingly acquiring fraudulent loans amounting to hundreds of billions for which we taxpayers are on the hook. Is that fair? Don't you wish someone had come forward to stop it before the problems got this big?

4. **Removal of whistleblower protections.** The legislation, as currently drafted, specifically allows companies to fire whistleblowers for violating any and all "company policies" no matter how minimal, self-serving, illogical, or contrary to public policy they might be. Rather than encourage whistle blowing, this provision gives companies a green light to "fire upon identification" for almost any trumped up cause.

The four core points, detailed above, are not minor provisions within an otherwise well-crafted and well-thought out bill; they are the essence of H.R. 2483, and raise the very real issue of intent.

What, exactly, is the purpose of this legislation? *What problem or problems is it designed to remedy?* In the first seven weeks of operation, the SEC received 334 whistleblower tips, and the Commission reports they are extremely pleased by the quality of the information. That sounds like success to me, not failure!

As you know, I spent nearly a decade trying to get the SEC to take action on Bernie Madoff while I was a derivatives portfolio manager for Rampart Investment Management, a multi-billion dollar asset management company. Over my entire career, I have watched stock traders and corporations engage in common run-of-the-mill timing frauds that have cheated stock holders out of tens of billions of dollars. *This legislation would do nothing to discourage those frauds.* In fact, this legislation reads as if it were a wish list from those who once designed the Enron, Madoff, Global Crossing, Stanford, and WorldCom frauds, effectively gutting the key whistleblower provision of Dodd-Frank in order to return to "business as usual". The Financial Collapse of 2008 could have been prevented if we had proper whistleblower programs in existence at that time. But we didn't and now our economy is in tatters along with this nation's balance sheet.

I urge members of the Subcommittee to reject this legislation, which is neither timely, well-crafted, or in the interest of public policy. Let's stop corporate fraud in its tracks before it bankrupts our nation. Corporate felons deserve no sanctuary from whistleblowers.

Respectfully Submitted,



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