AMERICAN ECONOMIC LIBERTIES PROJECT

How Policymakers Can Stop Monopoly Price Hikes

"We are the price leader. Competition is following in pricing, and we're measuring that."
—*Graeme Pitkethly, CFO, Unilever*

Krista Brown
Matt Stoller

ABOUT THE AUTHORS

KRISTA BROWN is a Senior Policy Analyst at the American Economic Liberties Project, where she focuses on studying the impacts of monopoly power on technology, data, and finance. Previously, Krista served as a researcher at the Open Markets Institute and an analyst at Future\Perfect Ventures.

MATT STOLLER is the Director of Research at the American Economic Liberties Project. He is the author of the Simon and Schuster book "Goliath: The Hundred Year War Between Monopoly Power and Democracy."

* * *

ACKNOWLEDGEMENTS

For generously providing expert insight, the Economic Liberties team would like to thank Eric Cramer, Alex Harman, Robert Lande, Reed Showalter, and Hal Singer.

INTRODUCTION

Prices are rising across the board, generating anger and frustration among voters. Price hikes have many causes, such as COVID-related supply shocks and the war in Ukraine. But one accelerant of inflation – price hikes from profiteering among dominant firms – stands out. American corporate profits have skyrocketed from $1 trillion in 2019 to $1.7 trillion in 2021,[1] with profit margin expansion from "pricing power" as a key story Wall Street analysts are telling.[2] This profit margin expansion is concentrated among large firms in dominant industries, not smaller firms without bargaining power. This proposal will describe the legal context that enables this profiteering by monopolists, and show how a simple tweak to price-fixing laws would help end this profit-price spiral.

CEOs regularly brag about their pricing power on investor calls, which can be a signal to competitors to keep prices high and create a "shared monopoly" in an industry. Traditionally, antitrust enforcers would see such rhetoric as an invitation to investigate firms for price-fixing. However, laws against price-fixing have been watered down by the courts, with one result being the endless parade of executives talking about price increases, and the acceleration of inflation due to this profiteering in concentrated industries. While most policies to address inflation will take time, policymakers can change laws around price-fixing among firms in highly concentrated industries, which will instantly caution firms against this collusive pricing behavior that results in higher prices and excess profits.

America's concentration problem is well-documented. 75% of U.S. industries have become more concentrated since 2000 due to lax enforcement of antitrust laws.[3] Firms in highly concentrated industries can engage in coordinated price hikes and/or wage suppression without triggering obvious alarm among antitrust enforcers. Consider behavior in the insulin market, with 13 tandem price increases between Sanofi and Novo Nordisk between 2009 and

[1] St. Louis Federal Reserve, Federal Reserve Economic Data, Nonfinancial Corporate Business: Profits After Tax. https://fred.stlouisfed.org/series/NFCPATAX
[2] Bloomberg, "The Bull Market Keeps Running Thanks to Growing Profit Forecasts," December 28, 2021. https://www.bloomberg.com/news/articles/2021-12-28/big-s-p-500-bull-case-lives-on-in-unwavering-profit-forecasts?sref=q0qR8k34
[3] Gustavo Grullon, Yelena Larkin, Roni Michaely, Are US Industries Becoming More Concentrated?, Review of Finance, Volume 23, Issue 4, July 2019, Pages 697–743, https://doi.org/10.1093/rof/rfz007

2016, most within 24 hours of each other.[4] This kind of behavior is also apparent in markets for everything from DRAM chips and titanium dioxide to containerboard. Rarely are coordinated price increases primarily motivated by changes in supply or demand. Yet with court decisions such as *Valspar Corp. v. Du Pont*, 873 F.3d 185 (2017) and *Indirect Purchaser v. Samsung Elecs. Co.*, No. 21-15125 (D.C., 2022), this behavior is effectively presumed legal.

Courts have determined that parties injured by collusive activity must provide exceptional evidence that the collusion was explicit, and not the result of "tacit collusion" or "conscious parallelism," before even getting the opportunity to conduct in-depth factual discovery. This standard means such cases rarely survive a motion to dismiss or motion to summary judgment, thus blocking credible price-fixing cases. See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007).

The following legal proposal hits the profit-price spiral in a number of ways. Sometimes unfair price hikes happen because companies in concentrated industries can collectively increase how much they charge for products without ever specifically agreeing to do so. Sometimes low wages occur because these same companies can collectively agree to suppress wages based on indirect communication.[5] Sometimes unfair price hikes happen because courts prematurely dismiss cases alleging collusion. And sometimes unfair price hikes happen because whistleblowers are too afraid of retribution to come forward. This draft legislation will provide enforcers with the tools necessary to address tacit and explicit forms of price-fixing collusion in all these situations.

The proposed law has five parts:

First, the Act would simplify the process of proving a price-fixing conspiracy by shifting the burden of proof on defendants who engage in parallel pricing and other conduct consistent with conspiracy to show that they are not, in fact, working to fix prices.

Second, the Act would fill an important gap in the law, namely, where plaintiffs allege circumstantial evidence of collusion, but where such evidence may be consistent with "conscious parallelism." The Supreme Court has decided that such cases may typically be

[4] Request for Study and Investigation into the Market Structure of the Insulin Industry and Potential Collusion Between Insulin Manufacturers, March 10, 2021. https://www.economicliberties.us/wp-content/uploads/2021/03/Insulin_Investigation_FTCLetter.pdf
[5] Matt Stoller, "Monopolies Take a Fifth of Your Wages," BIG, March 7, 2022. https://mattstoller.substack.com/p/monopolies-take-a-fifth-of-your-wages?s=r

dismissed before any discovery or trial. This legislation corrects this error, and confirms that plaintiffs' cases may survive motions to dismiss or motions for summary judgment where plaintiffs allege circumstantial evidence of collusion.

Third, the Act would confirm for courts that defendants who violate price-fixing laws may be barred from working in the industries in which they broke the law, either indefinitely or for a period of time.

Fourth, the Act would prevent plaintiffs from being forced to pursue allegations of violations of the price-fixing laws through arbitration, rather than litigation.

Fifth, the Act would broaden a whistleblower program for those who see companies conspiring to violate the antitrust laws. This whistleblower protection, modeled after that created for the Securities and Exchange Commission in the wake of the financial crisis, would prohibit companies, their customers, or their suppliers, from retaliating against those who complain about allegedly illegal conduct. It would also entitle whistleblowers to a portion of companies' fines that result from their disclosures.

* * *

SECTION-BY-SECTION ANALYSIS

- **Sections 1 and 2** title the bill and describe its purpose.
- **Section 3** adds four new subsections to Section 1 of the Sherman Act, which prohibits price-fixing conspiracies:
    - **Section 1a** shifts the burden in proving certain price-fixing conspiracies. Under it, a price-fixing conspiracy is presumed when a defendant engages in parallel pricing with a competitor, coupled with other behavior suggestive of a conspiracy. A defendant may overcome this presumption with evidence that no such coordination occurred.

    - **Section 1b** clarifies that it is sufficient to survive a motion to dismiss or motion for summary judgment if a plaintiff plausibly alleges any of the behaviors described in Section 1a.
    - **Section 1c** confirms the power of courts to bar people who violate the price-fixing laws from returning to the industries in which they committed their violations.
    - **Section 1d** prohibits plaintiffs from being forced to pursue claims of violations of this section through arbitration, rather than through litigation.
- **Section 4** establishes a program for whistleblowers to alert the government to potential violations of the antitrust laws. In cases in which the antitrust agencies recover money as a result of information shared, whistleblowers will be entitled to up to thirty percent of the award. The section also prohibits companies from taking retaliatory actions against whistleblowers, or from suppliers or buyers from doing the same against whistleblowers or their employers. The section replaces an earlier whistleblower program, established in 2020, that was limited to criminal violations of a subset of antitrust laws.
- **Section 5** requires the Department of Justice and FTC to promulgate regulations implementing the provisions of the previous sections, and clarifies that whistleblowers who act before the rulemaking is completed may still be entitled to compensation.

* * *

MODEL LEGISLATION

SEC. 1. SHORT TITLE.

This Act may be cited as the "Stop Big Business Price-Fixing Act"

SEC. 2. FINDINGS.

Congress finds the following:

(1) Meritorious claims of price-fixing have been dismissed despite strong circumstantial evidence that coordination among defendants occurred. In cases where there is strong circumstantial evidence to suggest that a conspiracy happened, the burden should rest on defendants to prove that there was no violation of the antitrust laws.

(2) In numerous cases, federal courts have held that allegations, taken as a whole, as consistent with "conscious parallelism" as with collusion are generally insufficient to survive a motion to dismiss or motion for summary judgment. *See, e.g.*, *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 761 (1984); *Brooke Grp. Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 227 (1993); *In re Baby Food Antitrust Litig.*, 166 F.3d 112 (3d Cir. 1999); *In re Chocolate Confectionary Antitrust Litig.*, 801 F.3d 383 (3d Cir. 2015); *Valspar Corp. v. E.I. DuPont De Nemours and Co.*, 873 F.3d 185 (3d Cir. 2017); *Kleen Prods. LLC v. Georgia-Pacific LLC*, 910 F.3d 927 (7th Cir. 2018); *In re Dynamic Random Access Memory (DRAM) Indirect Purchaser Antitrust Litig.*, No. 21-15125, 2022 WL 665236 (9th Cir. Mar. 7, 2022). These decisions offer a crabbed interpretation of the Sherman Act, and prevent meritorious price-fixing cases from advancing to trial and judgment.

(3) Whistleblowers who allege violations of the antitrust laws are inadequately protected from retaliation by their employers, suppliers, and customers, and have no opportunity to share in any damages that may result. This discourages people who know about antitrust violations from reporting them.

SEC. 3. CIRCUMSTANTIAL EVIDENCE OF CONSPIRACY.

(a) IN GENERAL.— Chapter 1, title 15, United States Code is amended by inserting after section 1 the following:

"SEC. 1a. CIRCUMSTANTIAL EVIDENCE OF CONSPIRACY.

"(a) DEFINITIONS.—In this section the following definitions shall apply:

"(1) PREDISPUTE ARBITRATION AGREEMENT.—The term 'predispute arbitration agreement' means any agreement to arbitrate a dispute that had not yet arisen at the time of the making of the agreement.

"(2) PREDISPUTE JOINT-ACTION WAIVER.—The term 'predispute joint-action waiver' means an agreement, whether or not part of a predispute arbitration agreement, that would prohibit, or waive the right of, one of the parties to the agreement to participate in a joint, class, or collective action in a judicial, arbitral, administrative, or

other forum, concerning a dispute that has not yet arisen at the time of the making of the agreement.

"(b) PRESUMPTION OF CONSPIRACY.—

"(1) A court shall presume that a defendant violated section 1 of this chapter when, for the market in which the alleged violation occurred:

"(A) Either:

"(i) The defendant raised the price of its product no more than 200 days before or after another defendant raised the price of its product; or

"(ii) It is more likely than not that an agreement exists with the defendant to raise the price of its product more than 200 days before or after another defendant raised the price of its product; and

"(B) Either:

"(i) The defendant invited another defendant to increase the price of its product;

"(ii) The defendant engaged in communications with another defendant that may result in anticompetitive harm, as defined by the Department of Justice and Federal Trade Commission;

"(iii) The defendant engaged in actions that would be against its own interests in the absence of a violation of section 1; or

"(iv) The price of the product in the market in which the alleged violation occurred is above that which would be predicted in absence of a violation of section 1.

"(2) A defendant may rebut this presumption with evidence that it did not engage in the actions described in section 1a(b)(1)(A) or section 1a(b)(1)(B) of this chapter.

"SEC. 1b. INFERENCES OF COLLUSION.

"In a suit alleging a violation of section 1 of this chapter, a court shall not dismiss the suit on a motion to dismiss or motion for summary judgment solely because the conduct alleged is consistent with "tacit collusion," "oligopolistic price coordination," or "conscious parallelism" where the plaintiff has plausibly alleged the actions described in section 1a(b)(1)(A) and any of the actions described in section 1a(b)(1)(B) of this chapter.

"SEC. 1c. INDUSTRY BANS.

"A person who violates this section may, at the discretion of the court, be barred permanently, or for a definite period, from working in the industry in which the violation occurred.

"SEC. 1d. INVALIDITY OF PRE-DISPUTE ARBITRATION AGREEMENTS.

"(a) IN GENERAL.—At the election of the person alleging conduct constituting a violation of this section, or the named representative of a class or in a collective action alleging such conduct, no predispute arbitration agreement or predispute joint-action waiver shall be valid or enforceable with respect to a case which is filed under Federal, Tribal, or State law and relates to a violation of this section.

"(b) DETERMINATION OF APPLICABILITY.—An issue as to whether this chapter applies with respect to a dispute shall be determined under Federal law. The applicability of this chapter to an agreement to arbitrate and the validity and enforceability of an agreement to which this chapter applies shall be determined by a court, rather than an arbitrator, irrespective of whether the party resisting arbitration challenges the arbitration agreement specifically or in conjunction with other terms of the contract containing such agreement, and irrespective of whether the agreement purports to delegate such determinations to an arbitrator.".

SEC. 4. WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.— Chapter 1, title 7a-3, United States Code is struck and replaced with the following:

"SEC. 7a-3. ANTITRUST WHISTLEBLOWER INCENTIVES AND PROTECTION.

"(a) DEFINITIONS.—In this section the following definitions shall apply:

"(1) ADVERSE ACTION.—The term 'adverse action' by an employer means to discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, an employee. The term 'adverse action' by a supplier or buyer means to refuse to deal, threaten, harass, directly or indirectly, or in any other manner discriminate against, an individual or an individual's employer.

"(2) COVERED JUDICIAL OR ADMINISTRATIVE ACTION.—The term 'covered judicial or administrative action' means any judicial or administrative action brought by the enforcement agencies under the antitrust laws that results in monetary sanctions.

"(3) ENFORCEMENT AGENCIES.—The term 'enforcement agencies' means the Department of Justice and the Federal Trade Commission, together or separably.

"(4) FUND.—The term 'Fund' means the Price-Fixing Consumer Protection Fund.

"(5) ORIGINAL INFORMATION.—The term 'original information' means information that—

"(A) is derived from the independent knowledge or analysis of a whistleblower;

"(B) is not known to the enforcement agencies from any other source, unless the whistleblower is the original source of the information; and

"(C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.

"(6) MONETARY SANCTIONS.—The term 'monetary sanctions', when used with respect to any judicial or administrative action, means any monies, including penalties, disgorgement, and interest, ordered to be paid.

"(7) RELATED ACTION.—The term 'related action', when used with respect to any judicial or administrative action brought by the enforcement agencies under the antitrust laws, means any judicial or administrative action brought by an entity described in subclauses (I) through (VIII) of subsection (h)(2)(D)(i) that is based upon the original information provided by a whistleblower that led to the successful enforcement of the enforcement agencies action.

"(8) WHISTLEBLOWER.—The term 'whistleblower' means any individual who provides, or 2 or more individuals acting jointly who provide, information relating to a violation of the antitrust laws to the enforcement agencies, in a manner established, by rule or regulation, by the enforcement agencies.

"(b) AWARDS.—

"(1) IN GENERAL.—In any covered judicial or administrative action, or related action, the enforcement agencies, under regulations prescribed by the enforcement agencies and subject to subsection (c), shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the enforcement agencies that led to the successful enforcement of the covered judicial or administrative action, or related action, in an aggregate amount equal to—

"(A) not less than 10 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions; and

"(B) not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions.

"(2) PAYMENT OF AWARDS.—Any amount paid under paragraph (1) shall be paid from the Fund.

"(c) DETERMINATION OF AMOUNT OF AWARD; DENIAL OF AWARD.—

"(1) DETERMINATION OF AMOUNT OF AWARD.—

"(A) DISCRETION.—The determination of the amount of an award made under subsection (b) shall be in the discretion of the enforcement agencies.

"(B) CRITERIA.—In determining the amount of an award made under subsection (b), the enforcement agencies—

"(i) shall take into consideration—

"(I) the significance of the information provided by the whistleblower to the success of the covered judicial or administrative action;

"(II) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in a covered judicial or administrative action;

"(III) the programmatic interest of the enforcement agencies in deterring violations of the antitrust laws by making awards to whistleblowers who provide information that lead to the successful enforcement of such laws; and

"(IV) such additional relevant factors as the enforcement agencies may establish by rule or regulation; and

"(ii) shall not take into consideration the balance of the Fund.

"(2) DENIAL OF AWARD.—No award under subsection (b) shall be made—

"(A) to any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the enforcement agencies, a member, officer, or employee of—

"(i) an appropriate regulatory agency;

"(ii) the Department of Justice; or

"(iii) a law enforcement organization;

"(B) to any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section; or

"(C) to any whistleblower who fails to submit information to the enforcement agencies in such form as the enforcement agencies may, by rule, require.

"(d) REPRESENTATION.—

"(1) PERMITTED REPRESENTATION.—Any whistleblower who makes a claim for an award under subsection (b) may be represented by counsel.

"(2) REQUIRED REPRESENTATION.—

"(A) IN GENERAL.—Any whistleblower who anonymously makes a claim for an award under subsection (b) shall be represented by counsel if the whistleblower anonymously submits the information upon which the claim is based.

"(B) DISCLOSURE OF IDENTITY.—Prior to the payment of an award, a whistleblower shall disclose the identity of the whistleblower and provide such other information as the enforcement agencies may require, directly or through counsel for the whistleblower.

"(e) NO CONTRACT NECESSARY.—No contract with the enforcement agencies is necessary for any whistleblower to receive an award under subsection (b), unless otherwise required by the enforcement agencies by rule or regulation.

"(f) APPEALS.—Any determination made under this section, including whether, to whom, or in what amount to make awards, shall be in the discretion of the enforcement agencies. Any such determination, except the determination of the amount of an award if the award was made in accordance with subsection (b), may be appealed to the appropriate court of appeals of the United States not more than 30 days after the determination is issued by the enforcement agencies. The court shall review the determination made by the enforcement agencies in accordance with section 706 of title 5, United States Code.

"(g) PRICE-FIXING CONSUMER PROTECTION FUND.—

"(1) FUND ESTABLISHED.—There is established in the Treasury of the United States a fund to be known as the 'Price-Fixing Consumer Protection Fund'.

"(2) USE OF FUND.—The Fund shall be available to the enforcement agencies, without further appropriation or fiscal year limitation, for—

"(A) paying awards to whistleblowers as provided in subsection (b); and

"(B) funding the activities of the Inspectors General of the enforcement agencies.

"(3) DEPOSITS AND CREDITS.—

"(A) IN GENERAL.—There shall be deposited into or credited to the Fund an amount equal to—

"(i) any monetary sanction collected by the enforcement agencies in any judicial or administrative action brought by the enforcement agencies under the antitrust laws that is not otherwise distributed to victims of violations of the antitrust laws; and

"(ii) all income from investments made under paragraph (4).

"(B) ADDITIONAL AMOUNTS.—If the amounts deposited into or credited to the Fund under subparagraph (A) are not sufficient to satisfy an award made under subsection (b), there shall be deposited into or credited to the Fund an amount equal to the unsatisfied portion of the award from any monetary sanction collected by the enforcement agencies in the covered judicial or administrative action on which the award is based.

"(4) INVESTMENTS.—

"(A) AMOUNTS IN FUND MAY BE INVESTED.—The enforcement agencies may request the Secretary of the Treasury to invest the portion of the Fund that is not, in the discretion of the enforcement agencies, required to meet the current needs of the Fund.

"(B) ELIGIBLE INVESTMENTS.—Investments shall be made by the Secretary of the Treasury in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Fund as determined by the enforcement agencies on the record.

"(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to the Fund.

"(5) REPORTS TO CONGRESS.—Not later than October 30 of each fiscal year beginning after the date of enactment of this subsection, the enforcement agencies shall

submit to the Committees on the Judiciary of the Senate and House of Representatives, a report on—

"(A) the whistleblower award program, established under this section, including—

"(i) a description of the number of awards granted; and

"(ii) the types of cases in which awards were granted during the preceding fiscal year;

"(B) the balance of the Fund at the beginning of the preceding fiscal year;

"(C) the amounts deposited into or credited to the Fund during the preceding fiscal year;

"(D) the amount of earnings on investments made under paragraph (4) during the preceding fiscal year;

"(E) the amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to subsection (b);

"(F) the balance of the Fund at the end of the preceding fiscal year; and

"(G) a complete set of audited financial statements, including—

"(i) a balance sheet;

"(ii) income statement; and

"(iii) cash flow analysis.

"(h) PROTECTION OF WHISTLEBLOWERS.—

"(1) PROHIBITION AGAINST RETALIATION.—

"(A) IN GENERAL.—No employer may take an adverse action against a whistleblower, and no supplier or customer may take an adverse action against a whistleblower or the whistleblower's employer, because of any act done by the whistleblower—

"(i) in providing information to the enforcement agencies in accordance with this section; or

"(ii) in initiating, testifying in, or assisting in any investigation or judicial or administrative action of the enforcement agencies based upon or related to such information.

"(B) ENFORCEMENT.—

"(i) CAUSE OF ACTION.—An individual who alleges discharge or other discrimination in violation of subparagraph (A) may bring an action

under this subsection in the appropriate district court of the United States for the relief provided in subparagraph (C).

"(ii) SUBPOENAS.—A subpoena requiring the attendance of a witness at a trial or hearing conducted under this section may be served at any place in the United States.

"(iii) STATUTE OF LIMITATIONS.—

"(I) IN GENERAL.—An action under this subsection may not be brought—

"(aa) more than 6 years after the date on which the violation of subparagraph (A) occurred; or

"(bb) more than 3 years after the date when facts material to the right of action are known by the employee alleging a violation of subparagraph (A).

"(II) REQUIRED ACTION WITHIN 10 YEARS.—Notwithstanding subclause (I), an action under this subsection may not in any circumstance be brought more than 10 years after the date on which the violation occurs.

"(C) RELIEF.—Relief for an individual prevailing in an action brought under subparagraph (B) shall include—

"(i) reinstatement with the same seniority status that the individual would have had, but for the discrimination;

"(ii) 2 times the amount of back pay otherwise owed to the individual, with interest; and

"(iii) compensation for litigation costs, expert witness fees, and reasonable attorneys' fees.

"(2) CONFIDENTIALITY.—

"(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the enforcement agencies and any officer or employee of the enforcement agencies shall not disclose any information, including information provided by a whistleblower to the enforcement agencies, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, United States Code, unless and until required to be disclosed to a defendant or respondent in connection with a

public proceeding instituted by the enforcement agencies or any entity described in subparagraph (C). For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section.

"(B) EXEMPTED STATUTE.—For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

"(C) RULE OF CONSTRUCTION.—Nothing in this section is intended to limit, or shall be construed to limit, the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

"(D) AVAILABILITY TO GOVERNMENT AGENCIES.—

"(i) IN GENERAL.—Without the loss of its status as confidential in the hands of the enforcement agencies, all information referred to in subparagraph (A) may, in the discretion of the enforcement agencies, when determined by the enforcement agencies to be necessary to accomplish the purposes of this Act and to protect investors, be made available to—

"(I) each other;

"(II) an appropriate regulatory authority;

"(III) a self-regulatory organization;

"(IV) a State attorney general;

"(V) any appropriate State regulatory authority;

"(VI) the Public Company Accounting Oversight Board;

"(VII) a foreign antitrust or regulatory authority; and

"(VIII) a foreign law enforcement authority.

"(ii) CONFIDENTIALITY.—

"(I) IN GENERAL.—Each of the entities described in subclauses (I) through (VIII) of clause (i) shall maintain such information as confidential in accordance with the requirements established under subparagraph (A).

"(II) FOREIGN AUTHORITIES.—Each of the entities described in subclauses (VII) and (VIII) of clause (i) shall maintain

such information in accordance with such assurances of confidentiality as the enforcement agencies determines appropriate.

"(3) RIGHTS RETAINED.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.

"(i) PROVISION OF FALSE INFORMATION.—A whistleblower shall not be entitled to an award under this section if the whistleblower—

"(1) knowingly and willfully makes any materially false, fictitious, or fraudulent statement or representation; or

"(2) uses any false writing or document knowing the writing or document contains any materially false, fictitious, or fraudulent statement or entry.

"(j) RULEMAKING AUTHORITY.—The enforcement agencies shall have the authority to issue such rules and regulations as may be necessary or appropriate to implement the provisions of this section consistent with the purposes of this section.".

(c) STUDY OF WHISTLEBLOWER PROTECTION PROGRAM.—

(1) STUDY.—The Inspectors General of the enforcement agencies shall conduct a study of the whistleblower protections established under the amendments made by this section, including—

(A) whether the final rules and regulation issued under the amendments made by this section have made the whistleblower protection program (referred to in this subsection as the "program") clearly defined and user-friendly;

(B) whether the program is promoted on the website of the enforcement agencies and has been widely publicized;

(C) whether the enforcement agencies is prompt in—

(i) responding to—

(I) information provided by whistleblowers; and

(II) applications for awards filed by whistleblowers;

(ii) updating whistleblowers about the status of their applications; and

(iii) otherwise communicating with the interested parties;

(D) whether the minimum and maximum reward levels are adequate to entice whistleblowers to come forward with information and whether the reward levels are so high as to encourage illegitimate whistleblower claims;

(E) whether the appeals process has been unduly burdensome for the enforcement agencies;

(F) whether the funding mechanism for the Price-Fixing Consumer Protection Fund is adequate; and

(I) such other matters as the Inspectors General deem appropriate.

(2) REPORT.—Not later than 30 months after the date of enactment of this Act, the Inspectors General shall—

(A) submit a report on the findings of the study required under paragraph (1) to the Committees on the Judiciary of the Senate and House of Representatives; and

(B) make the report described in subparagraph (A) available to the public through publication of the report on the website of the enforcement agencies.

SEC. 5. IMPLEMENTATION AND TRANSITION PROVISIONS.

(a) IMPLEMENTING RULES.—The enforcement agencies shall issue final regulations implementing section 3 and 4 of this Act, not later than 270 days after the date of its enactment.

(b) ORIGINAL INFORMATION.—Information provided to the enforcement agencies in writing by a whistleblower shall not lose the status of original information solely because the whistleblower provided the information prior to the effective date of the regulations, if the information is provided by the whistleblower after the date of enactment of this subtitle.

(c) AWARDS.—A whistleblower may receive an award pursuant to this Act, regardless of whether any violation of a provision of the securities laws, or a rule or regulation thereunder, underlying the judicial or administrative action upon which the award is based, occurred prior to the date of enactment of this Act.

(d) ADMINISTRATION AND ENFORCEMENT.—The enforcement agencies shall each establish a separate office to administer and enforce the provisions of this Act. Such office shall report annually to the Committees on the Judiciary of the Senate and House of Representatives on its activities, whistleblower complaints, and the response of the enforcement agencies to such complaints.

* * *