

Criminal Procedure, and amending section 1831k of this title] may be cited as the ‘Financial Institutions Anti-Fraud Enforcement Act of 1990.’”

§ 4202. Contents of declarations

A declaration filed pursuant to section 4201 of this title shall—

(1) set forth the name and address of the declarant and the basis for the declarant’s knowledge of the facts alleged;

(2) allege under oath or affirmation specific facts, relating to a particular transaction or transactions, which constitute a prima facie case of a violation giving rise to an action for civil penalties under section 1833a of this title affecting a depository institution insured by the Federal Deposit Insurance Corporation or any other agency or entity of the United States;

(3) contain at least 1 new factual element necessary to establish a prima facie case that was unknown to the Government at the time of filing; and

(4) set forth all facts supporting the allegation of a violation described in paragraph (2) known to the declarant, along with the names of material witnesses and the nature and location of documentary evidence known to the declarant.

(Pub. L. 101–647, title XXV, § 2562, Nov. 29, 1990, 104 Stat. 4894.)

§ 4203. Confidentiality of declarations

(a) Period of confidentiality

A declarant and the declarant’s agents shall not disclose the existence or filing of a declaration filed pursuant to section 4201 of this title until—

(1) the declarant receives notice that the Attorney General has concluded that an action should not be pursued under section 4206(b) of this title;

(2) the declarant receives notice of an award pursuant to section 4206(c) of this title; or

(3) the declarant is granted a contract to pursue an action under section 4205(b) or 4207 of this title.

(b) Maintenance of confidentiality to prevent prejudice

(1) Notwithstanding any other law, the contents of a declaration shall not be disclosed by the declarant if the disclosure would prejudice or compromise in any way the completion of any government investigation or any criminal or civil case that may arise out of, or make use of, information contained in a declaration, but information contained in a declaration may be disclosed as required by duly issued and authorized legal process.

(2) The Attorney General may in a circumstance described in paragraph (1) notify a declarant that continued confidentiality is required under this subsection notwithstanding paragraph (1) or (2) of subsection (a).

(c) Loss of rights

A declarant who discloses, except as provided by this chapter,¹ the existence or filing of a dec-

laration or the contents thereof to anyone other than a duly authorized Federal or State investigator or the declarant’s attorney shall immediately lose all rights under this subchapter.

(Pub. L. 101–647, title XXV, § 2563, Nov. 29, 1990, 104 Stat. 4894.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original “this title”, and was translated as reading “this subtitle”, meaning subtitle H of title XXV of Pub. L. 101–647, known as the Financial Institutions Anti-Fraud Enforcement Act of 1990, which is classified principally to this chapter, as the probable intent of Congress. For complete classification of subtitle H to the Code, see Short Title note set out under section 4201 of this title and Tables.

§ 4204. Ineligibility to file valid declarations

(a) In general

A declaration filed pursuant to section 4201¹ of this title and in accordance with sections 4202 and 4203 of this title is valid unless—

(1) the declaration is filed by a current or former officer or employee of a Federal or State government agency or instrumentality who discovered or gathered the information in the declaration, in whole or in part, while acting within the course of the declarant’s government employment;

(2) the declaration is filed by a person who knowingly participated in the violation of section 1517 of title 18 or any of the sections of title 18 referred to in section 1833a(c) of this title, or any other fraudulent conduct with respect to which the declaration is made;

(3) the declaration is filed by an institution-affiliated party (as defined in section 1813(u) of this title) who withheld information during the course of any bank examination or investigation authorized pursuant to section 1820 of this title which such party owed a fiduciary duty to disclose;

(4) the declaration is filed by a member of the immediate family of the individual whose activities are the subject of the declaration or where, in the discretion of the Attorney General, it appears the individual could benefit from the award; or

(5) the declaration consists of allegations or transactions that have been disclosed to a member of the public in a criminal, civil, or administrative proceeding, in a congressional, administrative, or Government Accountability Office report, hearing, audit or investigation, by any other government source, or by the news media, unless the person providing the declaration is the original source of the information.

(b) “Original source” defined

For the purposes of subsection (a)(5), the term “original source” means a person who has direct and independent knowledge of the information contained in the declaration and who voluntarily provided the information to the government prior to the disclosure.

(c) Notice of invalidity

If the Attorney General determines at any time that a declaration is invalid under this sec-

¹ See References in Text note below.

¹ See References in Text note below.

tion, that a declaration fails to meet the requirements of section 4202 of this title, or that a declaration has been disclosed in violation of section 4203 of this title, the Attorney General shall notify the person who filed the declaration in writing that the declaration is invalid, and the declarant shall not enjoy any of the rights of the declarant listed in section 4205 or 4206 of this title.

(Pub. L. 101-647, title XXV, § 2564, Nov. 29, 1990, 104 Stat. 4895; Pub. L. 108-271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

Section 4201 of this title, referred to in subsec. (a), was in the original "section 811", and was translated as reading "section 2561", meaning section 2561 of Pub. L. 101-647, as the probable intent of Congress, because Pub. L. 101-647 does not contain a section 811.

AMENDMENTS

2004—Subsec. (a)(5). Pub. L. 108-271 substituted "Government Accountability Office" for "General Accounting Office".

§ 4205. Rights of declarants; participation in actions, awards

(a) In general

A person who has filed a declaration that meets the requirements of sections 4201 through 4204 of this title shall have the rights stated in this section.

(b) Civil action

If the Attorney General determines that a cause of action referred to in section 4201 of this title based on the declaration should be referred to private counsel pursuant to subchapter III, the declarant, after consultation with the Attorney General, shall have the right to select counsel to prosecute the action, and the declarant and the declarant's counsel shall act in accordance with subchapter III.

(c) Criminal conviction

(1) When the United States obtains a criminal conviction and the Attorney General determines that the conviction was based in whole or in part on the information contained in a valid declaration filed under section 4201 of this title the Attorney General may, in his discretion, pay a reward to the declarant¹

(2) In determining the size of any award under paragraph (1), the Attorney General may, in the Attorney General's discretion, consider any appropriate factor, including—

(A) the seriousness of the offense for which the conviction was obtained;

(B) the extent to which the facts alleged in the declaration contributed to the conviction;

(C) the number of offenders apprehended pursuant to information provided by the declarant;

(D) whether or not the offender was previously under investigation by any law enforcement agency when the declaration was filed;

(E) the extent to which the declarant cooperated in the development of the Government's case and its presentation at trial;

(F) the sentences and fines imposed on the offender and other offenders in related cases;

(G) the extent to which other sources of private information were relied upon; and

(H) the hardship to the declarant and any expenses the declarant incurred in preparing the declaration.

(d) Share of funds and assets

(1) When the United States acquires funds or assets pursuant to the execution of a judgment, order, or settlement and the Attorney General determines that the judgment, order, or settlement was based in whole or in part on the information contained in a valid declaration filed under section 4201 of this title, the declarant shall have the right to share in the recovery as follows:

(A)(i) The declarant shall be entitled to 20 percent to 30 percent of any recovery up to the first \$1,000,000 recovered, 10 percent to 20 percent of the next \$4,000,000 recovered, and 5 percent to 10 percent of the next \$5,000,000 recovered.

(ii) In calculating an award under clause (i), the Attorney General may consider the size of the overall recovery and the usefulness of the information provided by the declarant.

(B) When a declarant has received an award under subsection (c), the Attorney General may subtract the amount of that reward from any recovery under this subsection.

(2)(A) When more than 1 declarant has provided information leading to a recovery under this subsection, the Attorney General shall first calculate the size of the total award under paragraph (1)(A) and then distribute that amount according to the contribution made by each declarant.

(B) In distributing any such award between 2 or more declarants, the Attorney General may, in the Attorney General's discretion, consider any appropriate factor.

(e) **Repealed. Pub. L. 107-273, div. A, title III, § 301(c)(3), Nov. 2, 2002, 116 Stat. 1781**

(f) Appropriate Federal banking agency exception

For purposes of this section, funds or assets acquired by the United States shall not include any funds or assets acquired by any appropriate Federal banking agency acting in any capacity or the Resolution Trust Corporation acting in any capacity, except for any civil money penalties recovered by a Federal banking agency through a final judgment, order or settlement.

(Pub. L. 101-647, title XXV, § 2565, Nov. 29, 1990, 104 Stat. 4896; Pub. L. 107-273, div. A, title III, § 301(c)(3), Nov. 2, 2002, 116 Stat. 1781.)

AMENDMENTS

2002—Subsec. (c)(1). Pub. L. 107-273 substituted "the Attorney General may, in his discretion, pay a reward to the declarant" for "the declarant shall have the right to receive not less than \$5,000 and not more than \$100,000, any such award to be paid from the Financial Institution Information Award Fund established under section 4209 of this title."

Subsec. (e). Pub. L. 107-273 struck out heading and text of subsec. (e). Text read as follows:

"(1) No person shall receive both an award under this section and a reward under either section 1831k of this

¹ So in original. Probably should be followed by a period.