NWC NATIONAL WHISTLEBLOWER CENTER

Submitted via Federal eRulemaking Portal: www.regulations.gov.

April 30, 2026

Andrea Gacki, Director
Financial Crimes Enforcement Network
U.S. Department of the Treasury
P.O. Box 39
Vienna, VA 22183

RE: AML WHISTLEBLOWER ACT RULEMAKING COMMENTS
Docket Number FINCEN-2026-0067 and RIN 1506-AB57
Department of the Treasury/Financial Crimes Enforcement Network

April 30, 2026

Dear Director Gacki:

On behalf of the National Whistleblower Center and the whistleblower law firm Kohn, Kohn and Colapinto, we are submitting the following comments pursuant to the Notice of Proposed Rulemaking submitted by the U.S. Department of Treasury, Financial Crimes Enforcement Network ("FinCEN). *See* 91 *Federal Register* 16328 (April 1, 2026).

The efforts to combat violations of the Bank Secrecy Act, money laundering, and sanctions are critically important to national security, the integrity of the international financial systems, combatting corruption, and enhancing democracy. These goals, and the importance of protecting and incentivizing whistleblowers to achieve these goals, are recognized as part of the core public policies of the United States.

We based these comments on our extensive experience in representing whistleblowers who have reported money laundering, foreign bribery, tax evasion, and other transnational fraud, along with the extensive work we engaged in with Congress between 2020-22 on the passage of the AML Whistleblower Improvement Act. *See* House Report 117-423.

Since 2008, at the invitation of various U.S. embassies and the State Department, we have met with hundreds of government officials, NGOs, Members of Parliament, human rights defenders, and journalists from over 75 countries. We are very familiar with the issues confronted by whistleblowers attempting to report the types of violations covered under the Notice of Proposed Rulemaking. Our proposal is based on nearly 20 years of experience and understanding obtained through participating in three Dodd-Frank rulemaking proceedings and successfully litigating numerous cases under all the major whistleblower award laws.

We would greatly appreciate an opportunity to meet directly with you or the officials working on the Proposed Rules. Please feel free to contact me via email at Stephen.kohn@kkc.com or call at 202-342-6980. You can also directly contact the National Whistleblower Center's Program Manager, Jeana Lee, who is assisting on these matters. Her email is Jeana.Lee@whistleblowers.org.

Respectfully submitted,

/s/ Stephen M. Kohn

Stephen M. Kohn
Founding Partner, Kohn, Kohn and Colapinto, LLP
Chairman of the Board of Directors, National Whistleblower Center

ATTACHMENT: COMMENTS SUBMITTED FOR THE FinCEN AML WHISTLEBLOWER RULEMAKING

Proposed Rule: Department of the Treasury, Financial Crimes Enforcement Network, "Whistleblower Protections and Incentives," 31 CFR Part 1010 and RIN 1506-AB57, 91 *Federal Register* 16328 (April 1, 2026)

COMMENTS SUBMITTED FOR THE FinCEN AML WHISTLEBLOWER RULEMAKING

Department of the Treasury, Financial Crimes Enforcement Network, "Whistleblower Protections and Incentives," 31 C.F.R. Part 1010 and RIN 1506-AB57, 91 Fed. Reg. 16328 (April 1, 2026) (Proposed Rule)

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[1] The National Whistleblower Center thanks Public Interest Law Fellow Alice Wanamaker and Public Interest Legal Interns Rachel Demeuse and Suyan Wang for their contributions to these Comments.

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INDEX OF ACRONYMS

AML	Anti-money laundering
AML WIA	Anti-Money Laundering Whistleblower Improvement Act
BSA	Bank Secrecy Act
CFTC	Commodities Futures Trading Commission
DEA	Drug Enforcement Administration
Dodd-Frank	Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
DOJ	Department of Justice
FBI	Federal Bureau of Investigations
FCPA	Foreign Corrupt Practices Act
FinCEN	Financial Crimes Enforcement Network
FOIA	Freedom of Information Act
Form 211	The form used to submit whistleblower information to the IRS
Form TCR	Tip, Complaint, or Referral; the form used to submit whistleblower information to the SEC, and CFTC. FinCEN proposes to use a similar form

IEEPA	International Emergency Economic Powers Act of 1977; a law for which whistleblowers can report violations and qualify for awards under the AML WIA
IRS	Internal Revenue Service
OECD	Organization for Economic Co-Operation and Development
NDA	Non-disclosure agreement
NGO	Non-Governmental Organization
NWC	National Whistleblower Center
OIG	Office of Inspector General
SEC/Commission	Securities and Exchange Commission
TCR	See Form TCR
TWEA	Trading With the Enemy Act of 1917; a law for which whistleblowers can report violations and qualify for awards under the AML WIA
WB-APP	Form WB-APP; the form used to submit a whistleblower award application to the SEC and CFTC. FinCEN proposes to use a similar form.

INTRODUCTION

The following comments are submitted in response to the Notice of Proposed Rulemaking filed by the Financial Crimes Enforcement Network ("FinCEN") regarding the Anti-Money Laundering Whistleblower Improvement Act ("AML WIA").[2] Comments are currently due on June 1, 2026.

The AML WIA requires the Department of Justice ("DOJ") and FinCEN to accept confidential and anonymous reports from whistleblowers worldwide who disclose violations of the Anti-Money Laundering Act of 2020, the Bank Secrecy Act ("BSA"), the Foreign Currency Transactions Reporting Act of 1970, the Foreign Narcotics Kingpin Designation Act, and other related laws ("collectively referred to in these comments as "AML Laws").[3] It requires FinCEN to pay mandatory awards of between 10-30% of the sanctions obtained from wrongdoers to qualified whistleblowers whose information triggers or significantly contributes to a successful enforcement action. FinCEN Director Andrea Gacki described the AML WIA as a vital tool to "increase enforcement by strategically deploying [FinCEN's] limited resources" which "holds tremendous potential as an enforcement force multiplier."[4]

Congressional sponsors responsible for passing the AML WIA (Senators Charles Grassley, Elizabeth Warren, and Raphael Warnock) recognized that the law should provide "vital support to U.S. law enforcement to enforce sanctions and anti-money laundering statues" by "incentivizing whistleblowers" to report AML violations and "hold money launders accountable." They recognized that the AML WIA could play a "crucial role in providing critical information to help U.S. law enforcement investigate and prosecute violations" "involving authoritarian regimes" "as well as individuals associated with transnational criminal organizations," and further acknowledged that appropriate regulations giving "whistleblowers flexibility regarding when and how they may report" violations" would be essential for the success of the law, as would strong "assurances that they [whistleblowers] will be protected when they take the risk to come forward." FinCEN's regulations, they argued, should not create any "barriers" that could "prevent whistleblowers from reporting" violations or "hamper our

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[2] FinCEN Proposed Rule, 91 *Federal Register* 16328 (April 1, 2026) (Proposed Rules) at 16328, https://www.govinfo.gov/content/pkg/FR-2026-04-01/pdf/2026-06271.pdf.

[3] Related laws include the International Emergency Economic Powers Act, Trading With Enemy Act of 1917, Currency and Foreign Transactions Reporting Act of 1970, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, and section 21 of the Federal Deposit Insurance Act. *See,* 91 *Federal Register* 16328, and n. 2.

[4] FinCEN, *Prepared Remarks of FinCEN Director Andrea Gacki During the SIFMA AML Conference*, Press Release (May 6, 2024), https://www.fincen.gov/news/speeches/prepared-remarks-fincen-director-andrea-gacki-during-sifma-aml-conference.

nation's ability to bring enforcement actions." Because "whistleblower incentive programs are powerful tools to prevent, detect, and prosecute criminal misconduct, wrongdoing, and fraud," they urged FinCEN to "prioritize the full implementation of the AML whistleblower program."[5]

The Sponsors' letter was followed-up more recently by a letter from Senators Grassley and John Fetterman, who stressed the importance of FinCEN enacting appropriate regulations: "An effective FinCEN whistleblower program is a critical tool for America's on-going fight against terrorists, drug-traffickers, and sanctioned state actors who are threats to our national security. Congress created [this] whistleblower program over five years ago. Yet, FinCEN has not finalized regulations that will make the program fully operational." The two expressed concern that the FinCEN whistleblower program had "not paid out any awards to whistleblowers who have risked their livelihoods and even lives to expose lawbreaking."[6]

The letters from the Sponsors and Senator Fetterman all echoed the concern raised by the House Financial Services Committee when it marked-up and unanimously endorsed the AML WIA. Quoting an NGO experienced in multi-billion-dollar money laundering cases implicating Russian oligarchs, the committee reported: "it is highly unlikely that persons with relevant information relating to illegal money laundering and financing terrorism will risk their livelihoods, reputations and the potential of high litigation costs without reasonable financial assurances."[7]

International experts have also strongly endorsed the structure focused on strict confidentiality and the payment of awards, and noted this structure's particular effectiveness in combatting international crimes such as violations of the Foreign Corrupt Practices Act. In a 2020 audit of the U.S.'s efforts to combat foreign bribery, the Organization for Economic Co-operation and Development was highly supportive of the United States' "sustained and holistic enforcement policy," which enabled it to "conclude foreign bribery matters comprehensively with effective, proportionate, and dissuasive sanctions." The OECD specifically credited the "Dodd-Frank Act's multi-faceted protections," which "provide powerful incentives for qualified whistleblowers to

[5] Letter from Senators Charles Grassley, Elizabeth Warren, and Raphael Warnock to Andrea Gacki, FinCEN Director (Feb. 2, 2024), https://www.grassley.senate.gov/imo/media/doc/grassley_warren_and_warnock_to_fincen_-_aml_whistleblower_program_implementation.pdf.

[6] Press Release, Senator Charles Grassley, Grassley, Fetterman Urge Implementation of Whistleblower Program to Fight Money Laundering (Feb. 3, 2026), https://www.grassley.senate.gov/news/news-releases/grassley-fetterman-urge-implementation-of-whistleblower-program-to-fight-money-laundering.

[7] H. Rep. 117-423 (2022), 3.

report foreign bribery allegations."[8] Similarly, a 2022 report by the Royal United Services Institute, the most prestigious think tank in a country (the United Kingdom) which has historically been highly skeptical of whistleblower rewards, determined that "whistleblower rewards reduce incidents of cartel formation, tax evasion and aggressive financial reporting, insider trading and fraud against the government."[9]

The importance of properly implementing laws such as the AML WIA was confirmed by formal findings of the SEC when the Commission enacted a rule expressing support for paying large awards to whistleblowers: "[I]t has been the Commission's experience that large awards in particular generate public interest and in so doing increases the instances of whistleblowers coming forward to report securities-law violations… large awards directly serve the purpose of the whistleblower program… by incentivizing whistleblowers to report violations to the Commission."[10] The SEC cited to extensive literature[11] demonstrating that award programs

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[8] Organization for Economic Co-operation and Development, *Implementing the OECD Anti-Bribery Convention Phase 4 Report: United States,* https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/09/implementing-the-oecd-anti-bribery-convention-phase-4-report-united-states_501faf3a/0cd34e9f-en.pdf, 7.
See also Organization for Economic Co-operation and Development, *Implementing the OECD Anti-Bribery Convention Phase 4 Two-Year Follow-Up Report: United States,* https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/10/implementing-the-oecd-anti-bribery-convention-phase-4-follow-up-report-united-states_bbccd968/d994f92a-en.pdf, 6 (endorsing Dodd-Frank's "robust framework of protections and incentives for whistleblowers" as "a good practice").

[9] Eliza Lockhart, *The Inside Track: The Role of Financial Rewards for Whistleblowers in the Fight Against Economic Crime,* Serious Organised Crime & Anti-Corruption Evidence Research Paper No. 31 (December 2024), available at https://www.rusi.org/explore-our-research/publications/external-publications/role-financial-rewards-whistleblowers-fight-against-economic-crime, at 29.

[10] 87 Fed. Reg. 9280 (Feb. 18, 2022), 9290.

[11] The SEC cited Andrew C. Call, et al., *Whistleblowers and Outcomes of Financial Misrepresentation Enforcement Actions,* 56 J. Acct. Res. 123 (2018), 126; and Alexander Dyck, Adair Morse, and Luigi Zingales, *Who Blows the Whistle on Corporate Fraud?* 65 J. Fin. 2213 (Nov. 9, 2010), https://doi.org/10.1111/j.1540-6261.2010.01614.x, 2215 (''[A] strong monetary incentive to blow the whistle does motivate people with information to come forward.'')
See also Philip G. Berger and Heemin Lee, *Did the Dodd-Frank Whistleblower Provision Deter Accounting Fraud?* 60 J. Acct. Res. 1337 (Sept. 2022), 1337-38 (''[f]ind[ing] that exposure to Dodd-Frank reduces the likelihood of accounting fraud of treatment firms by 17% relative to control firms.''); Christine Weidman & Chummei Zhu, *Do the SEC Whistleblower Provisions of Dodd Frank Deter Aggressive Financial Reporting*, 2018 CAAA Ann. Conf. (Mar. 3, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3081174; Jaron H. White, *The Deterrent Effect of Employee Whistleblowing on Firms' Financial Misreporting and Tax Aggressiveness,* 92 J. Acct. Rev. 247 (Sept. 2017), https://www.jstor.org/stable/26551271; Jacob Raleigh, *The Deterrent Effect of Whistleblowing on Insider Trading,* 59 J. Fin. Quant. An. 3739 (Sept. 29, 2021). *Id.,* fns. 90-92

substantially identical to the AML WIA were "effective at contributing to the discovery of violations," collecting "higher monetary penalties," and deterring frauds.[12] When publishing its Final Rule, the Commission cited to even more authorities endorsing the instrumental role in anti-corruption efforts played by whistleblower award programs structured in the same manner as the AML WIA.[13]

As can be seen from both the scope of the violations covered under the AML WIA and the empirical evidence of the FinCEN whistleblower program's potential efficacy, the need to enact effective and whistleblower-friendly regulations is a regulatory imperative. The National Whistleblower Center, and its *pro bono* counsel have been actively working on international whistleblower programs since 2008, were deeply involved in the drafting of the AML WIA, and have successfully represented numerous international whistleblowers under the Dodd-Frank Act, False Claims Act, Foreign Corrupt Practices Act, and Internal Revenue Act (among others). Moreover, they have successfully represented whistleblowers in major international money laundering cases for over ten years.

Based on this background and experience, the NWC and its counsel are making 19 formal comments that are necessary to ensure that the AML WIA effectively supports whistleblowers, contributes to enforcement actions, and deters money laundering and related crimes.[14]

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[12] *Id.* at 9292. *Also see* statement of then-SEC Chairman Jay Clayton: "Today's milestone award [of $114 million] is a testament to the Commission's commitment to award whistleblowers who provide the agency with high-quality information. Whistleblowers make important contributions to the enforcement of securities laws and we are committed to getting more money to whistleblowers as quickly and efficiently as possible." Press Release, SEC, SEC Issues Record $114 Million Whistleblower Award (Oct. 22, 2020), https://www.sec.gov/newsroom/press-releases/2020-266; SEC, Press Release, SEC Issues Largest-Ever Whistleblower Award (May 5, 2023), ("The size of today's award… not only incentivizes whistleblowers to come forward… but also… directly benefits investors, as whistleblower tips have contributed to enforcement actions," https://www.sec.gov/newsroom/press-releases/2023-89.

[13] SEC Final Whistleblower Program Rule, 87 Fed. Reg. 54140 (September 2, 2022) (Final Rule), 54147-48.

[14] Stephen M. Kohn, "How to Build a Successful Anti-Corruption and Whistleblower Program," *Whistleblower & Qui Tam Blog, National Law Review* (December 14, 2025).

COMMENT 1

PROPOSED RULES NEED TO ADDRESS THE CONTRIBUTIONS OF TRANSNATIONAL WHISTLEBLOWERS TO U.S. ENFORCEMENT EFFORTS

Laws Covered Under the AML Whistleblower Improvement Act, 91 Fed. Reg. 16328 (April 1, 2026), 16328-16329:

The Proposed Rules are primarily based on the regulations implemented by the U.S. Securities and Exchange Commission under the Dodd-Frank Act. Those regulations were designed to protect American investors in public companies.

The laws covered under the FinCEN Proposed Rules are transnational in nature. These laws include the Bank Secrecy Act, the Anti-Money Laundering Act, the Foreign Narcotics Kingpin Designation Act, the Trading With the Enemy Act ("TWEA"), the Currency and Foreign Transactions Reporting Act, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, and the International Emergency Economic Powers Act ("IEEPA").

Unlike Dodd-Frank, these laws have a major international focus and are not focused on protecting U.S. investors.

The Proposed Rules need to be revised to incorporate the special needs of non-U.S. whistleblowers who will play a central role in reporting violations covered under the AML WIA.

In these Comments, these covered laws are collectively referenced as the AML Law(s).

AML Law **91 Fed. Reg. 16328 (April 1, 2026), 16329.**	**Corresponding Proposed Rule**	**Comment**
"The purpose of the Bank Secrecy Act is to combat money laundering, financing of terrorism, and other illicit finance activity, including by individuals associated with drug cartels and transnational organized criminal groups."	No specific regulation. The Bank Secrecy Act is one of the laws covered under the AML WIA. Others include the Anti-Money Laundering Act and the Foreign Narcotics Kingpin Designation Act.	Persons reporting the violations covered under the AML WIA may reside overseas, where there is a lack of whistleblower protections and significant safety risks for whistleblowers, including risks of bodily harm. U.S. whistleblower anti-retaliation laws do not apply overseas, and the ability of U.S.

	No Proposed Rules specifically address issues related to how non-U.S. persons with significant information on these violations can utilize these laws.	law enforcement to protect international whistleblowers is extremely limited or non-existent. Initially, most international whistleblowers will not fully understand how to file a claim under the AML WIA, and will also have difficulty obtaining an attorney. For the AML WIA to work effectively, its governing regulations must be user-friendly for international whistleblowers, and efforts must be undertaken to work with international partners, including foreign law enforcement agencies, NGOs, and the international news media; to educate potential whistleblowers about the incentives and protections available under the AML WIA; and to ensure that whistleblowers who work through these international sources, including international human rights defenders, are eligible for compensation under the AML WIA. The Proposed Rules do not address issues related to international whistleblowers who initially contact representatives in U.S. embassies or other U.S. international offices, such as the Department of State, regarding transnational crimes covered under the AML WIA. The final rules need to be adjusted to ensure that the primary purposes of the AML WIA, to "*incentivize whistleblowers to report*

		violations of the BSA, IEEPA, TWEA, and the Kingpin Act to Treasury, DOJ, or to their employer," are fully implemented as they relate to potential whistleblowers who reside abroad. 91 Fed. Reg. 16328 (April 1, 2026), 16330.

COMMENT 2

PROPOSED RULES FAIL TO ACKNOWLEDGE THE RISKS FACED BY TRANSNATIONAL WHISTLEBLOWERS

Proposed Rule § 1010.930

General Concern: Special hardships faced by non-U.S. whistleblowers are not addressed in the Proposed Rules

FinCEN rules need to incorporate procedures and protections for non-U.S. whistleblowers who often have the best evidence of AML/Sanctions violations but often lack adequate protections.

Today, whistleblowers from all over the world still face substantial threats to personal safety. FinCEN rules must take these threats into consideration. The examples presented here are only a small sample of these threats.

Whistleblower	Hardship	Disclosure	Source
Pamela Mabini **(2025)** - South Africa -	**Murdered**	Mabini denounced sexual abuse, rape, and **human trafficking** in South Africa by a high-profile televangelist.	Human Rights Watch: "Activist and Whistleblower Killed in South Africa"
Val Broeksmit **(2022)** - Germany -	**Disappeared** **Declared dead**	Broeksmit **exposed financial irregularities** at Deutsche Bank. He leaked secret files to F.B.I. investigators looking at the bank's ties to money laundering, and Russia.	New York Times: "Val Broeksmit, 46, Who Blew the Whistle on Deutsche Bank, Dies"
Mohamed Benhlima **(2022)** - Algeria -	**Sentenced to life; torture & ill-treatment**	Benhlima was a former military officer and whistleblower who published online	Amnesty International: "Algeria: Further Information: Tortured

		publications exposing alleged **corruption** within the Algerian military.	Whistleblower Sentenced to Life: Mohamed Benhlima"
Babita Deokaran **(2021)** - South Africa -	**Murdered**	Deokaran was the Department of Health's Chief Director of Financial Accounting and a key witness in investigations into **suspect contracts** worth millions of dollars.	AP News: "South Africa must guard whistleblowers says security expert"
Krizle Grace Mago **(2021)** - Philippines -	**Disappeared**	Mago was an executive of Pharmally Pharmaceuticals Corporation who denounced massive **corruption** in the Philippines.	Inquierer.net: "Exposing wrongdoing: The uncertain fate of whistleblowers in PH"
Athol Williams **(2021)** - South Africa -	Fled the country **fearing for his life**	Williams testifies at a state inquiry into massive **corruption** allegations.	BBC: "Athol Williams: South Africa corruption whistle-blower flees for his life"
Abdullah Ibhais **(2019)** - Qatar-	**Detention** - Threatened and **coerced into making incriminating confessions** - Unfair trial In total, he spent **3 years in prison**.	Ibhais denounced unpaid wages and inhumane working conditions during the construction of the stadiums for the FIFA World Cup in Qatar.	https://www.amnesty.org/en/latest/news/2024/07/un-body-calls-for-release-of-qatar-whistleblower/

Dr Bülent Şık **(2019)** - Turkey -	**15 months of jail** for "disclosing classified information" Acquitted in 2025.	Şık revealed the findings of his research that exposed toxic pollution that was a risk to public health.	https://www.amnesty.org/en/latest/news/2019/09/turkey-charges-against-whistleblower-who-exposed-public-health-dangers-must-be-dropped-2/
Fang Bin **(2020)** - China -	**Disappeared**, later sentenced to **three years in jail** at a secret trial in Wuhan.	Fang documented the **initial Covid outbreak** in the Chinese city of Wuhan.	BBC: "Fang Bin: China Covid whistleblower returns home to Wuhan after jail"
Shuping Wang **(2019)** - China -	Threatened and then **died** of a heart attack, in the U.S, where she had been living for several years.	Wang exposed a **health scandal** involving HIV-contaminated blood.	BBC: "Shuping Wang: Whistleblower who exposed HIV scandal in China dies"
Jiang Yanyong **(2019)** - China -	(2019) Placed under **house arrest at the age of 87**. (2004) Detained, **Interrogation**, and **indoctrination** sessions	Jiang is a military surgeon who exposed the Chinese **government's cover-up of the SARS epidemic** in 2003, and wrote to denounce the Tiananmen Square crackdown.	New York Times: "Jiang Yanyong, Who Helped Expose China's SARS Crisis, Dies at 91"
Aleksandar Obradovic **(2019)** - Serbia -	10 BIA agents came to **arrest** Obradovic at his workplace. He stayed 3 months in prison.	Obradovic leaked documents which revealed **corruption** and **fraud** inside of a state-owned Serbian company.	Wikipedia: "Aleksandar Obradović (whistleblower)"
Rui Pinto **(2019)** - Portugal -	Pinto was **arrested** and was held in custody for over a	Pinto created a website named Football Leaks, which revealed systematic **money**	BBC: "Man City case 'moral reward' for Football Leaks hacker, lawyer claims"

	year while awaiting trial. He is charged with 90 different offenses and faces up to **25 years in prison**. He **received a 4-year suspended** sentence in 2023.	**laundering** through the Cayman Islands by major football clubs and agents.	
Alexander Perepilichnyy **(2018)** - Russia -	Received **death threats**; later found **dead** on the road after his exile in Britain.	Perepilichnyy exposed a Russian **money laundering** network.	BBC: "Alexander Perepilichnyy: The questions raised by Russian whistleblower inquest"
Mārtiņš Bunkus **(2018)** - Latvia-	**Murdered**	Bunkus alerted regulators to his suspicions of **possible money laundering** linked to LPB Bank.	AML Intelligence: "NEWS: Former Latvian bank owner jailed for ordering whistleblower's murder"
Nikolai Gorokhov **(2017)** - Russia -	**Almost died** after a mysterious fall from his apartment window.	Gorokhov represents the family of the whistle-blowing attorney **Sergei Magnitsky**, who died in a Russian prison in 2009 (case below). *"Eight people who have been involved in the same case have died in mysterious or violent circumstances, while Gorokhov and another man have*	NBC: "Lawyer Probing Russian Corruption Says His Balcony Fall Was 'No Accident'"

		survived a combined three suspected assassination attempts."	
Daphne Caruana Galizia **(2017)** - Malta -	**Murdered.**	Galizia was a journalist who denounced **money laundering** through Maltese banks, connected to organized crime.	Reporters Without Borders: "Malta: after a new conviction for the murder of Daphne Caruana Galizia, RSF calls for full justice and strong measures to protect journalists"
Javier Valdez Cárdenas **(2017)** - México-	Attacks and death threats throughout his career. **Murdered**.	Cárdenas exposed **drug trafficking**, cartel economics and human costs of the narco wars in Sinaloa, Mexico.	https://rsf.org/en/node/79290
Miroslava Breach Velducea **(2017)** - Mexico -	**Shot to death**.	Breach **infiltrated a cartel** during local elections in Chihuahua, naming candidates linked to the Salazar criminal clan.	https://www.pen-international.org/news/mexico-the-case-miroslava-breach-must-be-completely-clarified
Mosilo Mothepu **(2016)** - South Africa-	**Fear for personal safety;** facing severe **personal repercussions,** including two years of unemployment and legal battles	Mothepu exposed the government **siphoning money from state-owned companies.** *Between 2015 and 2020, more that 850 people in either political or administrative office were **murdered**. Many of them were whistleblowers.*	BBC: "South African whistle-blower: I don't feel safe"

Bastian Onermayer **(2016)** - Germany -	**Threats** - "Some of the individuals and companies we wrote about hired law firms, which sent us long letters why we should not report about their case."	In the Panama Papers scandal, which exposed **offshore entities**, the whistleblower remained anonymous, but the journalists who reported on the story around the world faced retaliation.	https://www.europarl.europa.eu/cmsdata/109784/FAQ_F%20Obermaier_B%20Obermayer_%20PanamaPapers.pdf https://www.icij.org/investigations/panama-papers/20161201-journalists-face-backlash/
Ming Pao **(2016)** - Hong Kong -	**Dismissed** hours after the Panama Papers revelations were made public.		
Moussa Aksar **(2016)** - Niger -	**Death threats**.		
Ahiana Figueroa **(2016)** - Venezuela -	**Fired** from one of the country's biggest newspapers.		
Shehla Masood **(2011)** - India -	**Murdered**	Masood sought to expose **environmental violations** (negative impact of pollution) of urban infrastructure projects in central India.	https://www.amnesty.org/en/documents/asa20/044/2011/en/
Jimmy Mohlala **(2009)** - South Africa -	**Murdered**	Mohlala exposed **irregularities** concerning the **construction** tenders of a Stadium for the 2010 FIFA World Cup.	https://www.playthegame.org/news/south-african-official-and-world-cup-whistleblower-killed/
Sergei Magnitsky **(2009)** - Russia -	**Died in custody**	Magnitsky was a tax advisor who exposed **corruption** and **misconduct** by Russian government officials.	BBC: "Magnitsky wins Russian rights battle 10 years after his death"

		Magnitsky's case inspired the Magnitsky Act in the US.	
Hervé Falciani **(2008)** - Europe (Switzerland, France, Italy, Spain) -	The Swiss Federal Criminal Court sentenced Falciani in absentia to **five years in prison** for "*economic espionage*." **International arrest warrant** against him. **Arrested** several times during ten years. The United States warned him that **his life was in danger**.	Falciani exposed **massive tax evasion** and **money laundering** practices encouraged by the Swiss bank HSPC Switzerland. In France, thanks to Mr. Falciani's revelations, HSBC Private Bank Suisse SA agreed to pay 300 million to avoid a trial for "money laundering related to tax fraud."	El Pais: "Hervé Falciani: 'You can be very rich and still be a hick'" Le Monde: "SwissLeaks : le lanceur d'alerte Hervé Falciani arrêté en Espagne"
Shanmugam Manjunath **(2005)** - India-	**Murdered**	Manjunath was an officer for the Indian Oil Corporation who sealed a **corrupt petrol station**.	Wikipedia: "Shanmugam Manjunath"
Marlene Garcia-Esperat **(2005)** - Philippines -	**Murdered**	Garcia-Esperat was a whistleblower and investigative journalist who conducted **anti-corruption work** in the Philippines.	Committee to Protect Journalists: "Marlene Garcia-Esperat"
Satyendra Dubey **(2003)** - India -	**Murdered**	Dubey exposed **corruption** involving the construction of India's largest highway project.	Whistleblower Network News: "The Story of India's "First Whistleblower:" Stalled Progress in

			the Wake of Satyendra Dubey's 2003 Murder"
Christoph Meili **(1997)** - Switzerland -	Fired, received **death threats**.	Meili **exposed hidden Swiss bank records** denying Holocaust victims their assets.	Los Angeles Times: "Swiss-Bank Whistle-Blower Pays a High Price"

COMMENT 3

PROPOSED RULES SHOULD INCORPORATE THE FINDINGS AND RECOMMENDATIONS OF THE OECD

Final Rules need to incorporate the findings and recommendations of the Organization of Economic Cooperation and Development Phase IV Audit of the United States (Two-Year Follow-Up), pp. 6, 10
https://one.oecd.org/document/DAF/WGB(2022)43/FINAL/en/pdf

The OECD audited the Dodd-Frank whistleblower law, which is substantially identical to the AML WIA. The OECD audit looked at the whistleblower program's coverage of whistleblowers who report violations of the FCPA. Both the OECD's findings regarding reporting behavior by international whistleblowers and its recommendations regarding Dodd-Frank's application to whistleblowers reporting FCPA violations are fully applicable to the AML WIA.

Rule Changes Based on the OECD (Organization of Economic Cooperation and Development) Phase IV Audit of the United States

OECD Recommendation / Finding	Corresponding Proposed Rule	Comment
Interagency education: Due to the complexity of the whistleblower regulations applicable to disclosures under the FCPA, the OECD recommended that the DOJ and SEC provide additional guidance on how to qualify for an award based on the source to whom a whistleblower made their initial disclosure. OECD Phase IV Report Follow-Up, p. 6, Recommendation 1c.	No regulation or requirement for guidance addressing this OECD recommendation.	The OECD determined that whistleblowers who should have been eligible for coverage under Dodd-Frank were being disqualified, primarily due to lack of knowledge of complex SEC reporting requirements. The OECD recommended that the SEC and DOJ provide "guidance" to potential whistleblowers to insure coverage. Due to the large number of potential federal agencies, and divisions within agencies involved in the crimes covered under the AML WIA, providing "guidance" on how to qualify under the AML WIA would not be fully effective. Regarding the AML WIA, the only solution to the issues identified by the OECD is to establish rules which are

		distinct from the Dodd-Frank rules and accommodate the realities facing international whistleblowers. When the Dodd-Frank rules were proposed and debated in 2010-11, there was no focus whatsoever on the international application of the law under the FCPA, and no international organizations or U.S. NGOs with an international focus commented on any of the proposals. Modifying the SEC regulations to accommodate the realities facing international whistleblowers can be readily accomplished by following the recommendations below, which will also make the AML WIA more effective in the United States. While insufficient on its own, educational programing is also needed, and the OECD's recommendation for "guidance" should be structured into the final regulations. In particular,FinCEN should be required to participate in international training programs for U.S. personnel working in embassies, international law enforcement agencies, NGOs, human rights defenders, corporate compliance programs, attorneys, and members of the news media.
OECD Recommendation / Finding	**Corresponding Proposed Rule**	**Comment**
News Media: 20% of successful FCPA cases reported to the USA from news media sources. OECD Phase IV Report Follow-Up, p. 10.	No Proposed Rule addressing the right of whistleblowers to submit "original information" to the DOJ or FinCEN through the news	Whistleblowers have historically reported to the news media as an excellent method to maintain confidentiality, call attention to corruption, initiate government investigations, and, where necessary, pressure governments to take

	media. 31 U.S.C. § 5323(a)(3)(C).	corrective action. Protecting so-called 'media-first whistleblowers' is consistent with actual whistleblower behavior, incentivizes increased whistleblower activity, and benefits the public interest. The importance of ensuring that whistleblowers who report to the news media are fully protected is demonstrated not only by the fact that 20% of successful FCPA cases arise from media reports, but also by the codified findings of the SEC. The SEC approved a Policy Statement on freedom of the press, explaining the importance of the government learning about violations through the news media: "*Freedom of the press is of vital importance to the mission of the Securities and Exchange Commission. Effective journalism complements the Commission's efforts to ensure that investors receive the full and fair disclosure that the law requires, and that they deserve. Diligent reporting is an essential means of bringing securities law violations to light and ultimately helps to deter illegal conduct*." Commission Policy Statement (April 12, 2006), 17 C.F.R. § 202.10.

Rule Changes Based on the OECD (Organization of Economic Cooperation and Development) Phase IV Audit of the United States		
OECD Recommendation / Finding	**Corresponding Proposed Rule**	**Comment**
NGOs: 10% of successful FCPA cases reported to the U.S. from NGOs and foreign law enforcement agencies. OECD Phase IV Report Follow-Up, p. 10.	No Proposed Rule covering reports made initially to foreign law enforcement agencies or nongovernmental organizations (NGOs).	It is well established that foreign law enforcement agencies cooperate with U.S. law enforcement agencies in prosecuting international financial crimes, money laundering violations, and violations of the FCPA. Likewise, anti-corruption NGOs operate throughout the world, often in countries which lack an effective rule of law and have corrupt governments, putting the safety of whistleblowers at high risk. International whistleblowers often trust local law enforcement agencies and local anti-corruption NGOs, and raise concerns to them first. It is vitally important that the FinCEN regulations fully acknowledge that whistleblowers will make initial reports to these entities, and that these reports need to be covered under the AML WIA. The changes recommended below to the TCR filing rule and the definition of "voluntary" will mitigate the hardships and difficulties faced by international whistleblowers. Specific channels for covering these reports should also be established, along with the recommended training and "guidance".

Rule Changes Based on the OECD (Organization of Economic Cooperation and Development) Phase IV Audit of the United States		
OECD Recommendation / Finding	**Corresponding Proposed Rule**	**Comment**
Internal corporate disclosures: 10% of successful FCPA cases were reported to the U.S. through corporate reports. OECD Phase IV Report Follow-Up, p. 10.	The AML WIA specifically protects whistleblowers who report to their employer. 31 USC § 5323(b)(1). The Proposed Rules acknowledge this right, but do not establish a clear reporting structure to implement it. Additionally, other rules potentially disqualify corporate executives, auditors, or compliance officials from obtaining coverage under the AML WIA in conflict with Congress's requirement that internal reporting be fully covered. Compare 31 U.S.C. § 5323(b)(1) (coverage of whistleblowers who raise internal concerns) with 31 C.F.R. § 1010.930(c)(5)(iii) (disqualifying numerous classifications of corporate employees who do not delay in reporting violations).	Employees working at international banks, financial services organizations, and companies engaged in international trade will be in the front-line of identifying money laundering, violations committed by transnational organized crime, institutions involved in terrorist financing, and companies violating sanctions are in the front-line of identifying crimes covered under the AML WIA. It is absolutely critical that these employees understand their rights under the AML WIA and that their internal reporting be fully protected. The Dodd-Frank whistleblower law, which the AML WIA is based on, did *not* cover internal reporting. Thus, modeling the AML WIA on the current SEC regulations will not adequately address the newly created right of internal whistleblowers to fully qualify for awards under the AML WIA.

COMMENT 4

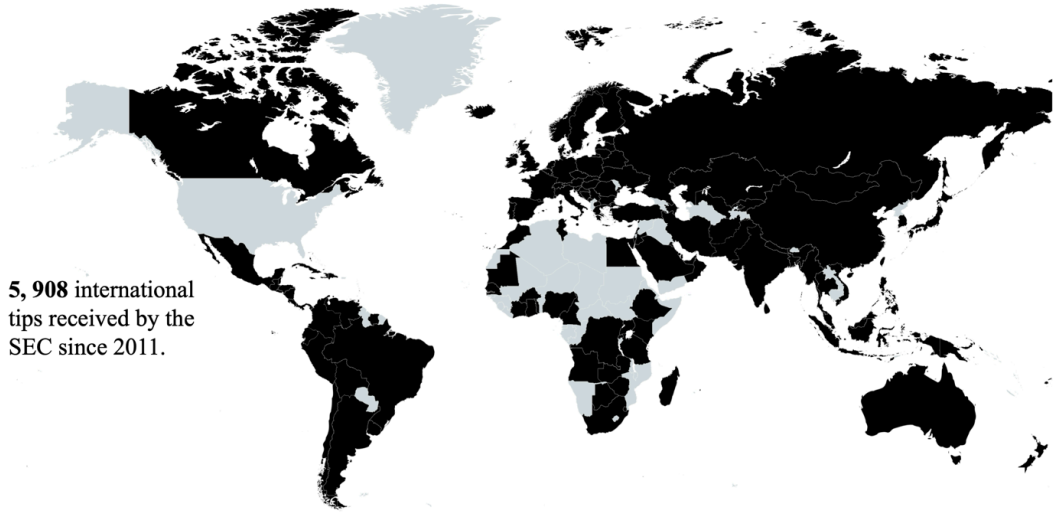
COUNTRIES WHERE WHISTLEBLOWER HAVE SUBMITTED TIPS UNDER THE DODD-FRANK ACT (2011-2021) DEMONSTRATE THE TRANSNATIONAL NATURE OF THE AML WIA

31 U.S.C. § 5323 (b)
No procedures accommodating transnational whistleblowers

According to the annual reports of the SEC, international whistleblowers from countries shaded black in the graphic below filed claims under the Dodd-Frank Act to the U.S. SEC between 2011-2021. After 2021, SEC no longer published this data.

These statistics demonstrate that international whistleblowers have used the Dodd-Frank Act to report violations of the FCPA, and clearly signal that many international whistleblowers will attempt to use the AML WIA to report money laundering and other violations covered under the AML Laws. Procedures must be put in place to accommodate transnational whistleblowers and ensure that they are not denied awards due to restrictive filing requirements; disqualifications of corporate officials; common-sense-defying definitions of "voluntary;" or the failure to understand the importance of initial whistleblower disclosures to the news media, NGOs, foreign government law enforcement agencies, and internal reporting structures.

Countries Where Whistleblowers Have Submitted Tips Under U.S. Law
(2011-2021)



5, 908 international tips received by the SEC since 2011.

Source: U.S. SEC Office of the Whistleblower Annual Report (2021)

COMMENT 5 **PROPOSED RULES FAIL TO RECOGNIZE THAT INTERNATIONAL WHISTLEBLOWERS HAVE NO PROTECTION UNDER U.S. RETALIATION LAWS**		
Proposed Rule § 1010.930(f)(3) **Failure to adhere to the plain meaning of the statute**		
FinCEN proposed rules §1010.930(f)(3)	**Precedent for No Transnational Application of Anti-Retaliation Laws**	**Comment**
Proposed 31 C.F.R. § 1010.930(f)(3) prohibits an employer from retaliating against a whistleblower, but only applies to employees working in the United States. **91 Fed. Reg. 16328 (April 1, 2026), 16341.**	*Carnero v. Boston Scientific Corp.*, 433 F.3d 1 (1st Cir. 2006). No anti-retaliation protections for international whistleblowers.	International whistleblowers lack any anti-retaliation protections under the FinCEN regulations, the AML WIA, or any other U.S. whistleblower protection law, laws protecting witnesses, or obstruction of justice laws. This makes it extremely important to ensure that the AML WIA offers the maximum confidentiality protections for international whistleblowers and ensures that these whistleblowers can reasonably qualify for mandatory awards. FinCEN recognized the importance of protecting whistleblowers from retaliation and ensuring confidentiality. *See,* 91 Fed. Reg. 16328 (April 1, 2026), 16341 ("FinCEN recognizes that preserving confidentiality and protecting whistleblowers against retaliation may be as important as financial incentives in encouraging potential whistleblowers to come forward with information."). Because international whistleblowers lack the anti-retaliation protections afforded to persons working within the

		United States, FinCEN must take specific action to ensure that their final rules offer maximum coverage to international whistleblowers under the AML WIA in terms of confidentiality and award eligibility. International whistleblowers face greater threats than domestic whistleblowers from reporting. Both to protect them and to incentivize their disclosures, their eligibility under the AML WIA must be maximized whenever possible.

COMMENT 6 **PROPOSED RULES DO NOT ADEQUATELY ADDRESS THE RIGHT OF WHISTLEBLOWERS TO DIRECTLY SUBMIT ORIGINAL INFORMATION TO DOJ**		
31 U.S.C. § 5323 (b) **Procedures for submitting original information to Department of Justice ("DOJ")**		
AML Law **31 U.S.C. § 5323/** **Public Policy**	**Corresponding Proposed Rule**	**Comment**
"(b) AWARDS.- (1) IN GENERAL.- … shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the employer of the individual, the Secretary, or the **Attorney General**…"	No regulation.	The DOJ is one of two U.S. agencies required to accept confidential and anonymous AML WIA complaints. 31 U.S.C. § 5323(b). FinCEN's final AML WIA regulations need to establish procedures for processing "original information" initially submitted to the DOJ. Although the DOJ has not implemented the statutory right of whistleblowers to make initial reports directly to the DOJ, FinCEN regulations must ensure that when claims are filed with the DOJ, all the rights whistleblowers have under law are acknowledged by FinCEN. Per the statute, such whistleblowers must be explicitly guaranteed full confidentiality and anonymity within the Department of Treasury and throughout the award application process. The Proposed Rules must acknowledge that whistleblowers can file AML WIA cases with each and every component of the DOJ, including those with an international presence, such as the Drug Enforcement Agency ("DEA"), the Federal Bureau of Investigation ("FBI") (including Legal Attachés), the Office of International Affairs, the

		U.S. Attorneys' Offices (including the Southern District of New York), the Office of Foreign Litigation, the FCPA Unit, the Money Laundering, Narcotics and Forfeiture Section, the Resident Legal Advisors attached to U.S. embassies, and the Human Rights and Special Prosecutions Section, among others. This acknowledgement is critical for international whistleblowers, who are often familiar with these offices. The Proposed Rule concerning filing AML whistleblower claims with FinCEN using a Form TCR cannot be applicable to claims initially filed with the DOJ, as the DOJ has no specialized office established to accept the AML Whistleblower cases and does not have its own version of a TCR. Whistleblowers who exercise their statutory right to report AML violations directly to the DOJ cannot be prejudiced by any FinCEN regulation. To do so would undermine Congress's requirement that the DOJ accept AML whistleblower claims as one of two agencies authorized to accept the initial filings from the whistleblowers, and thus violate the Administrative Procedure Act. Information shared with the DOJ must also be subjected to the confidentiality and anonymity requirement set forth in 31 U.S.C. § 5323(g)(D).

31 U.S.C. § 5323 (b) Procedures for submitting original information to DOJ		
AML Law 31 U.S.C. § 5323/ Public Policy	**Corresponding proposed rule.**	**Comment**
"(b) AWARDS.- (1) IN GENERAL.- … shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the employer of the individual, the Secretary, or the **Attorney General**…"	"(i) Information must initially be submitted using FinCEN's "Tip, Complaint, or Referral" form (Form TCR), a successor form, or in another manner authorized by FinCEN." ***Proposed Rule: 31 C.F.R. § 1010.930(b)(1)(i)***	Information initially filed with the DOJ must be exempt from the TCR requirement. Whistleblowers have a statutory right to file information directly to the DOJ. Until the DOJ properly implements this statutory right, FinCEN must accept as properly filed any whistleblower AML claim initially presented to any division of the DOJ. The Proposed Rules should confirm that information can be filed directly with the DOJ on a confidential and anonymous basis, and that FinCEN will take all necessary steps to ensure the protection of this information pursuant to the requirements of the AML WIA. The right of AML WIA whistleblowers to file information directly, confidentially, and anonymously to the DOJ is established under the controlling statute. Failure to protect this right would violate the Administrative Procedure Act.

COMMENT 7 **PROPOSED RULES DO NOT FULLY IMPLEMENT FinCEN's STATUTORY REQUIREMENTS FOR CONFIDENTIALITY**		
31 U.S.C. § 5323 (g)(4) **Failure to follow statutory requirement regarding confidentiality of whistleblower information provided to federal and state agencies**		
AML Law **31 U.S.C. § 5323(g)(4)** **Public Policy**	**Corresponding Proposed Rule**	**Comment**
"(D) AVAILABILITY TO GOVERNMENT AGENCIES.- (i) In general.-Without the loss of its status as confidential in the hands of the Secretary or the Attorney General, as applicable, all information referred to in subparagraph (A) may, in the discretion of the appropriate such official, when determined by that official to be necessary to accomplish the purposes of this subchapter, chapter 35 or section 4305 or 4312 of title 50, or the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 190 1 et seq.), be made available to- (I) any appropriate Federal authority; (II) a State attorney general in connection with any criminal investigation; (III) any appropriate State regulatory authority; and (IV) a foreign law enforcement authority."	"(1) *Sharing original information with government agencies.* Original information will be made available to the Department of the Treasury and the DOJ. FinCEN may also, at its discretion, make original information available to other appropriate agencies and authorities." ***Proposed Rule: 31 C.F.R. § 1010.930(f)(1)***	This Proposed Rule is in direct conflict with the requirements under 31 U.S.C. § 5323(g)(4). If either the DOJ or FinCEN shares information with other government agencies (state or federal), FinCEN must ensure that the agency obtaining the information maintains the same level of confidentiality and anonymity required under the AML WIA and required to be adhered to by FinCEN. This is a statutory requirement based on the statute and failure to implement this provision would be a violation of the Administrative Procedure Act.

31 U.S.C. § 5323 (g)(4)(D)(ii)(II) **Failure to follow law on confidentiality regarding the availability of whistleblower information provided to foreign authorities**		
AML Law **31 U.S.C. § 5323(g)(4)** **Public Policy**	**Corresponding Proposed Rule**	**Comment**
"(D) AVAILABILITY TO GOVERNMENT AGENCIES.- (i) In general.-Without the loss of its status as confidential in the hands of the Secretary or the Attorney General, as applicable, all information referred to in subparagraph (A) may… be made available to- (IV) a foreign law enforcement authority… (ii) (II)Foreign authorities – each [foreign law enforcement authority] shall maintain such information in accordance with such assurances of confidentiality as determined by the Secretary or Attorney General, as applicable."	"(1) *Sharing original information with government agencies.* Original information will be made available to the Department of the Treasury and the DOJ. FinCEN may also, at its discretion, make original information available to… foreign law enforcement authorities." ***Proposed Rules: § 1010.930(f)(1) 1010.930(f)(2)(i)(B)***	The AML WIA requires FinCEN and the DOJ to take steps to ensure that whistleblower information provided to foreign law enforcement agencies are kept confidential and that the foreign agencies respect the confidentiality and anonymity of the whistleblowers. This Proposed Rule is in direct conflict with the requirements under 31 U.S.C. 5323(g)(4)(D)(ii)(II) when information is shared by either the DOJ or FinCEN with foreign law enforcement agencies. FinCEN's regulations must fully implement the requirement set forth in 31 U.S.C. 5323(g)(4)(D)(ii)(II). Failure to implement this statutory right would be a violation of the Administrative Procedure Act.

COMMENT 8 **PROPOSED RULES DO NOT IMPLEMENT DOJ CONFIDENTIALITY REQUIREMENTS**		
31 U.S.C. § 5323(b) and (d)(2) **No procedure for submitting original information anonymously to the DOJ**		
AML Law **31 U.S.C. § 5323/** **Public Policy**	**Corresponding Proposed Rule**	**Comment**
"(b) AWARDS.- (1) [FinCEN] shall pay [awards to] whistleblowers who voluntarily provided original information to… the **Attorney General**…"	No Proposed Rule explains how whistleblowers are to "provide" information to the DOJ under the AML whistleblower law. No Proposed Rule ensures that information anonymously and confidentially provided to the DOJ will remain anonymous and confidential throughout the investigatory process.	Regulations on how whistleblowers can file anonymous and confidential disclosures to the DOJ are required under the AML WIA. The DOJ is a department authorized to accept anonymous AML claims, and this obligation cannot be ignored. Without implementing these procedures in rulemaking, the statutory right of whistleblowers to file anonymous and confidential AML claims directly to the DOJ cannot be effectuated. FinCEN's regulations must take the right of whistleblowers to file initial claims with the DOJ into consideration in the administration of all its regulations, including filing procedures, procedures to maintain whistleblower information as confidential, and award qualification requirements.

31 U.S.C. § 5323 (d)(2)(A) No Procedure for submitting anonymous disclosures to the DOJ		
AML Law 31 U.S.C. § 5323/ Public Policy	**Corresponding Proposed Rule**	**Comment**
"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." 31 U.S.C. § 5323(d)(2)(A)	No regulation covers how a whistleblower can make a confidential and anonymous claim to the Justice Department.	As a receiving office, the DOJ must have procedures for accepting anonymous claims. The DOJ has a large international presence, with multiple offices, including the FBI, Drug Enforcement Administration ("DEA"), and law enforcement officials responsible for foreign corruption cases (including AML and terrorist financing work) in numerous foreign countries, and DOJ officials are stationed in embassies. Procedures for filing AML WIA claims with the DOJ, including units that operate overseas, is essential to the proper operation of the AML WIA. International whistleblowers need full assurances of confidentiality and anonymity, especially as they are not covered under U.S. anti-retaliation laws and often reside in jurisdictions where whistleblowers lack legal protections and face extreme safety risks. The ability to report crimes such as money laundering, sanctions violations, cartel violations of the Bank Secrecy Act, and terrorist financing directly to the DOJ, anonymously and confidentially, is essential to the success of the AML WIA. The FinCEN regulations must address this issue and accommodate AML WIA cases that are initially submitted to the DOJ.

31 U.S.C. § 5323 (g)(4) Failure to include the DOJ in rule protecting confidentiality		
AML Law 31 U.S.C. § 5323/ Public Policy	**Corresponding Proposed Rule**	**Comment**
"(A) … Secretary [of Treasury/FinCEN] or the Attorney General, as applicable, and any officer or employee of the Department of the Treasury or the Department of Justice, shall not disclose any information, including information provided by a whistleblower to either such official, which could reasonably be expected to reveal the identity of a whistleblower… unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the appropriate such official or any entity described in subparagraph (D)."	***Proposed Rule 31 C.F.R. § 1010.930(f)(2)(i)*** does not cover the DOJ and does not require the DOJ to protect whistleblower confidentiality as required under 31 U.S.C. § 5323(g)(4).	The DOJ is subject to the same confidentiality requirements as FinCEN and the Department of Treasury. Despite this clear statutory requirement, FinCEN's Proposed Rules have not addressed this requirement or implemented procedures ensuring that information initially filed with the DOJ or shared with the DOJ is subject to FinCEN's strict confidentiality requirements. The lack of regulations in the Proposed Rules addressing all aspects of whistleblower confidentiality as required under the AML WIA will create a chilling effect on disclosures.

COMMENT 9 **FinCEN SHOULD ADOPT IRS CONFIDENTIALITY REQUIREMENTS**		
Adopt the IRS regulation on whistleblower confidentiality Internal Revenue Manual 25.2.1.5.4		
Internal Revenue Manual 25.2.1.5.4 (11-30-2023), "Protection of Whistleblower Information"	**Corresponding Proposed Rule**	**Comment**
The Department of Treasury, Internal Revenue Service's regulation on protecting whistleblower confidentiality: "The identity or existence of a whistleblower must not be disclosed to anyone, including other IRS officials or employees except on a 'need to know' basis in the performance of their official duties. There should be no mention of the whistleblower or the SME on any documents that will be associated with the examination case file. "To maintain maximum security and protect the whistleblower's identity, keep all documents, screen displays, and forms secured. All employees are responsible for safeguarding and protecting information. Whistleblower information must be kept confidential. See IRM 10.5.1, Privacy and Information Protection, Privacy Policy.	The Proposed Rules have no comparable provision.	The IRS regulation on confidentiality works extremely well. Their regulation provides more detail than the Proposed Rules. The basic requirement under the IRS rule is simple and straightforward: "To the fullest extent permitted by the law, the IRS will protect the identity of the whistleblower." The IRS has implemented these requirements despite the fact that the IRS whistleblower law does not contain the same strict statutory provisions contained in the AML WIA. Conforming the Treasury Department's confidentiality regulations for whistleblowers to the IRS's policy is also critically important because IRS agents often work on money laundering cases, and the IRS whistleblower law itself includes money laundering matters. It is in the public interest to have Treasury Department employees investigating cases under either the IRS whistleblower law or the AML WIA to handle confidential whistleblower information under one set of rules. The IRS regulations

"To the fullest extent permitted by the law, the IRS will protect the identity of the whistleblower and will neither confirm nor deny the existence of a whistleblower. In some instances, however, it may be necessary and in the government's best interests to reveal the identity of a whistleblower in a judicial proceeding. The decision to disclose the identity of a whistleblower must be coordinated with Counsel and the WO." Internal Revenue Manual 25.2.1.5.4 (11-30-2023), "Protection of Whistleblower Information"		should be adopted in full. In regard to responding to Freedom of Information Act ("FOIA") requests, the Proposed Rules should endorse the protections afforded whistleblowers pursuant to the following court case decided by the U.S. Court of Appeals for the D.C. Circuit: *Montgomery v. IRS*, 40 F.4th 702 (D.C. Cir. 2022). FinCEN and the Department of Treasury should follow the precedent in *Montgomery* in refusing to even acknowledge the existence of documents that could reveal the identity of a whistleblower. See *Montgomery,* upholding the lower court's finding that the "IRS's explanation that it asserted a Glomar Response for all documents regarding its whistleblower program because a confirmation of the existence or absence of whistleblower documents in a particular case may lead a savvy requester to the very whistleblower himself. *Montgomery,* 330 F. Supp. 3d at 170–71."

COMMENT 10 **PROPOSED RULES DISQUALIFY INDIVIDUALS IN VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT**		
The AML Whistleblower Improvement Act explicitly defines who is not eligible for an award. **31 U.S.C. § 5323(c)(2)** **The Department of Treasury lacks the jurisdiction to add additional disqualifications to this list. Any such additional disqualifications violate the Administrative Procedure Act and the plain meaning of the statute.**		
AML Law **31 U.S.C. § 5323(c)(2)** **Public Policy**	**Corresponding Proposed Rules (various)**	**Comment**
The following is the statutory provision setting forth the disqualifications approved by Congress: "(2) DENIAL OF AWARD. - No award under subsection (b) may be made - (A) to any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the Secretary or the Attorney General, as applicable, a member, officer, or employee— (i)of— (I) an appropriate regulatory or banking agency; (II) the Department of the Treasury or the Department of Justice; or (III) a law enforcement agency; and (ii) acting in the normal course of the job duties of the whistleblower; (B) to any whistleblower who is convicted of a criminal	*The following Proposed Rules disqualify whistleblowers in violation of the list created by Congress based either on the job duties/position of the whistleblower or the conduct of the whistleblower:* ***31 C.F.R. § 1010.930(c)(5)(ii)*** (disqualification of foreign officials, including employees of state-owned/ monarchy-owned banks and financial institutions) ***31 C.F.R. §1010.930(c)(5)(iii)*** (disqualification of	Because Congress specifically defined those categories of persons excluded from obtaining an award, FinCEN is without authority to make additional exclusions by rulemaking. All the exclusions set forth in the Proposed Rules must be eliminated. FinCEN is within its discretion to create specific rules governing the areas excluded in the Proposed Rules, or permit the agency to reduce awards based on these factors, but a blanket exclusion is not permitted under the Administrative Procedure Act. Congress had the authority to disqualify entire classes of potential whistleblowers, but FinCEN cannot substitute its judgment for Congress's when establishing specific class-wide disqualifications. The Department of Treasury is without legal authority to expand on Congress's determination concerning eligibility or the reporting behavior of a whistleblower. *See Digital Realty v. Somers,* 583 U.S. 149 (2018) (agencies must adhere to limitations when Congress "delineates

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 Secretary or the Attorney General, as applicable, in such form as the Secretary, in consultation with the Attorney General, may, by rule, require." **31 U.S.C. § 5323(c)(2)**	directors, officers, partners and compliance officials under certain circumstances) ***31 C.F.R. § 1010.930(c)(5)(iv)(3)*** (disqualification of whistleblowers based on methods used to obtain evidence) ***31 C.F.R. §1010.930(e)(2)*** (disqualification of whistleblowers based on failure to sign contracts or other documents, regardless of the restrictions placed on the whistleblower) ***31 C.F.R. §1010.930(e)(3)(i)(B)*** (restrictions on the compensation paid to culpable whistleblowers, which are not authorized by statute)	a more circumscribed class;" statutory definition "resolves the question").

Proposed Rule § 1010.930(c)(5)(ii) **Additional qualification requirements for awards not authorized by statute**		
AML Law **31 U.S.C. § 5323(c)(2)**	**FinCEN Proposed Rules** **(various)**	**Comment**
See **31 U.S.C. § 5323(c)(2)** above	"(ii) *Foreign Officials*. A whistleblower is not eligible for an award if the whistleblower is, or was at the time the whistleblower acquired the original information: (A) A member, officer, employee, or contractor of a foreign government, any political subdivision, department, or agency of a foreign government, or any other foreign financial regulatory authority or law enforcement organization." ***Proposed Rule: 31 C.F.R. §*** **1010.930(c)(5)(ii)**	This foreign official exclusion is not authorized by statute. Inasmuch as Congress created a list of excluded persons, it is not appropriate for the Treasury to add additional persons to the exclusion list. Numerous financial institutions are state-owned, especially in socialist countries and monarchies. Bankers working in these institutions should not be excluded. In some circumstances, a "foreign official" may be the subject of retaliation or intimidation by corrupt foreign governments and could be an invaluable source of information. A blanket exemption of this class of persons is not in the public interest, especially considering the types of violations covered under the AML WIA. FinCEN has apparently adopted this exemption from the SEC rules governing Dodd-Frank. However, the types of securities violations covered under Dodd-Frank are substantially different from those covered under the AML WIA.

Proposed Rule § 1010.930(c)(5)(iii) **Additional award qualification requirements not authorized by statute**		
AML Law **31 U.S.C. § 5323(c)(2)** **Public Policy**	**Corresponding Proposed Rule**	**Comment**
See **31 U.S.C. § 5323 (c) (2)** above	"(iii) *Certain individuals who obtain information from internal audit and compliance programs*. A whistleblower must wait at least one hundred and twenty (120) calendar days after obtaining information before providing it to FinCEN to be eligible for an award if: (A) The whistleblower obtained such information because the whistleblower was an officer, director, trustee, or partner of an entity, or the whistleblower learned the original information in connection with the entity's processes for identifying, reporting, and addressing possible violations of law by that entity or a related entity including but not limited to a subsidiary or other	Congress did not provide any exclusion for officers, directors, trustees, partners, or compliance officials. Instead, they explicitly protected persons who raised concerns internally, which would include officers, directors, trustees, partners, and compliance officials. This exclusion is counter to the statute. The exclusion is loosely based on a similar SEC regulation. However, Dodd-Frank did not cover internal reporting, and various exceptions to the 120-day rule under Dodd-Frank are not included in the Proposed Regulations. The SEC created this 120-day reporting requirement based on the fact that publicly traded companies in the United States have extensive internal compliance programs. Even so, the SEC regulation contained exceptions that permitted officers, directors and compliance persons to immediately report to the SEC if there was evidence of a cover-up or if the violations were major. The violations covered under the AML WIA are not primarily securities violations, and the non-U.S. entities that may be involved in violations covered under the AML WIA will often be radically different from those covered under a standard Dodd-Frank securities violation.

	affiliate under common control; or (B) The whistleblower obtained such information because the whistleblower was an employee whose principal duties involve audit or compliance responsibilities, or an employee or individual associated with a firm retained to perform audit or compliance functions for an entity." ***Proposed Rule: 31 C.F.R. § 1010.930(c)(5)(iii)***	The types of persons and entities involved in international organized crime, money laundering, terrorist financing, working within drug cartels, violating sanctions, etc. are often extremely dangerous, and placing any incentive or requirement that persons working within these entities, or who witness these types of crimes, make internal reports could place these individuals at extreme risk and also result in their losing the ability to maintain confidentiality or anonymity. Conversely, unlike under Dodd-Frank, Congress has explicitly protected the right of *all* employees, regardless of position, title, or job function, to directly file an AML WIA case with DOJ or Treasury (i.e. FinCEN), or to raise these concerns internally. That decision is left to the employee, and cannot be interfered with by regulation. There is no justification whatsoever to place any restrictions on directors, officers, partners, auditors, or other classifications of employees who may be reporting violations covered under the AML WIA.
Proposed Rule § 1010.930(c)(5)(iv)(3) **Additional award qualifications not authorized by statute**		
AML Law **31 U.S.C. § 5323(c)(2)** **Public Policy**	**Corresponding Proposed Rule**	**Comment**
See **31 U.S.C. § 5323(c)(2)** above	"(3) By a means or in a manner that is determined by a United States court to violate Federal or state criminal law"	The only restriction on the means and manner used by a whistleblower to obtain evidence they provide to the United States for the purposes of reporting a violation should be whether or not that evidence is admissible in a civil, administrative, or

	Proposed Rule: 31 C.F.R. § 1010.930(c)(5)(iv)(3)	criminal proceeding. For example, under criminal law, if an individual sees a bloody knife at the home of a person who is a suspect of a murder, and places that knife in her pocket with the intent to provide it to the police and prevent the evidence from being destroyed, even though that may technically be a "theft," the knife would still be admissible in evidence. Following this principle, whistleblowers should not be chilled from obtaining evidence with the intent to provide it lawfully to the DOJ or FinCEN if they reasonably believe that this evidence may be destroyed or ultimately hidden.
Proposed Rule § 1010.930(e)(2) **Additional award qualifications not authorized by statute**		
AML Law **31 U.S.C. § 5323(c)(2)** **Public Policy**	**Corresponding Proposed Rule**	**Comment**
See **31 U.S.C. § 5323(c)(2)** above	"(2) *Agreements*. Each whistleblower must enter into any confidentiality agreement, and, in appropriate circumstances, any advance or amortizing payment agreement, requested by and in a form acceptable to FinCEN prior to any issuance or payment of an award." ***Proposed Rule: 31 C.F.R. §***	This requirement is not required under any of the Dodd-Frank whistleblower programs and violates the Administrative Procedure Act insofar as it creates a nonstatutory award qualification requirement. The Proposed Rule has no limitations on the type of information that must be kept confidential under this provision, and thus could violate the First Amendment. *See ACLU v. Holder,* 673 F.3d 245 (4th Cir. 2011). The proposal does not differentiate between a non-disclosure agreement ("NDA") regarding information the government may provide to the whistleblower to assist in the

	1010.930(e)(2)	investigation, (which could be completely appropriate,) and restrictions on the right of the whistleblower to take his or her own information to other entities (including the news media, foreign law enforcement, NGOs, etc.). A whistleblower can be presented with an NDA on a case-by-case basis, but they must maintain the right to reject that NDA without risking losing their right to an award. Any NDA must conform to the constitutional requirements set forth in *ACLU v. Holder,* 673 F.3d 245 (4th Cir. 2011).
Proposed Rule § 1010.930(e)(3)(i)(B) **Additional award qualifications not authorized by statute**		
AML Law **31 U.S.C. § 5323(c)(2)** **Public Policy**	**Corresponding Proposed Rule**	**Comment**
See **31 U.S.C. § 5323 (c) (2)** above.	Collected monetary sanctions will not include amounts: "(B) Paid by an entity whose liability is determined by the Department of the Treasury or the Department of Justice to be based substantially on conduct that the whistleblower directed, planned, initiated, or controlled." ***Proposed Rule: 31 C.F.R. §***	The statute sets forth a criminal disqualification for qualifying for an award. Under the statute, that is the only culpability limitation that can result in a blanket disqualification. The wording of the Proposed Rule's disqualification is extremely broad and could be open to abuse and/or creating a chilling effect on important informants. For example, the terms "directed" or "controlled" could include a whistleblower who had supervisory authority over a small part of a much larger money laundering scheme. This provision is a radical expansion of the "plan and initiate" disqualification that currently exists in

	1010.930(e)(3)(i)(B)	whistleblower laws, and which have not been subject to abuse. For example, the IRS whistleblower law, which was the basis for Dodd-Frank (the law the AML WIA is based on), includes the following disqualification for those who plan and initiate illegal activity: **"*(3)REDUCTION IN OR DENIAL OF AWARD*** *If the Whistleblower Office determines that the claim for an award under paragraph (1) or (2) is brought by an individual who planned and initiated the actions that led to the underpayment of tax or actions described in subsection (a)(2), then the Whistleblower Office may appropriately reduce such award. If such individual is convicted of criminal conduct arising from the role described in the preceding sentence, the Whistleblower Office shall deny any award."* 26 U.S.C. § 7623(b)(3). A regulation that tracks this language would be appropriate. But the current proposal is far too broad, will create a chilling effect on otherwise extremely important informants, and violates the Administrative Procedure Act.

COMMENT 11 **PROPOSED RULES' DEFINITION OF "VOLUNTARY" WILL RESULT IN THE DENIAL OF OTHERWISE MERITORIOUS WHISTLEBLOWER CLAIMS. *WEBSTER*'S DICTIONARY DEFINITION IS THE APPROPRIATE STANDARD FOR DETERMINING VOLUNTARINESS**		
Proposed Rule § 1010.930(c)(2) **Failure to adhere to the plain meaning of the statute**		
AML Law **31 U.S.C. § 5323/** **Public Policy**	**Corresponding Proposed Rule**	**Comment**
The term "voluntary" is not defined in the AML whistleblower law.	"(2) *Voluntariness*. A whistleblower's submission of original information is voluntary if it is made prior to any request, inquiry, or demand about a matter related or relevant to the original information in the whistleblower's submission from Congress, any agency or authority, or a self-regulatory organization, to the whistleblower or the whistleblower's attorney or other representative, or in some circumstances to a whistleblower's employer." ***Proposed Rule: 31 C.F.R. § 1010.930(c)(2)***	The Proposed Rule is not consistent with the plain meaning of "voluntary." It creates a dangerous exception that will result in the disqualification of voluntary whistleblowers who make initial reports to entities such as NGOs, the news media, and foreign government law enforcement agencies, which the OECD has identified as regular recipients of initial whistleblower disclosures. FinCEN should adopt the definition of "voluntary" from *Webster's Dictionary.* This definition states: "Acting, or done, of one's own free will without valuable consideration; acting or done without any present legal obligation to do the thing done or any such obligation that can accrue from the existing present legal obligation to do the thing done or any such obligation that can accrue from the existing state of affairs." Voluntary, *Webster's Third New International Dictionary* (1981) . In its 2010-11 Dodd-Frank whistleblower rulemaking proceeding, the SEC cited favorably to the False Claims Act case defining "voluntary" that relied on *Webster's* definition. 76

		Fed. Reg. 34307, n. 71 (June 13, 2011), quoting *United States ex rel. Fine v. Chevron, USA, Inc.,* 72 F.3d 740 (9th Cir. 1995). The two other cases cited by the SEC to justify its definition of "voluntary" were both consistent with the holding of *U.S. ex rel. Fine*. 76 Fed. Reg. at 34307, n.71. *U.S. ex rel. Paranich v. Sorgnard*, 396 F.3d 326, 338-39 (3d Cir. 2005) also cited directly to *Webster's*. The third case did not offer any definition of voluntary. *U.S. ex rel. Barth v. Ridgedale Electric, Inc*., 44 F.3d 699 (8th Cir. 1995). Instead, it followed a contextually based approach, consistent with *Fine* and *Paranich*, to determine that the whistleblower was not an "original source" under the False Claims Act. *Id.*, 44 F.3d at 704. Relying on *Webster's* definition is consistent with established tools of statutory construction that require agencies, in the absence of a statutory definition, to "construe a statutory term in accordance with its ordinary or natural meaning." *FDIC v. Meyer*, 510 U.S. 471, 476 (1994). Undermining a common sense, plain meaning understanding of the term "voluntary" would violate the Administrative Procedure Act. *See, Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). The Proposed Rule also ignores the right of AML WIA whistleblowers to qualify for awards based on internal disclosures. Such a right did not exist under Dodd-Frank, so duplicating the SEC's current regulation fails to incorporate this statutory right.

DEFINITION OF "VOLUNTARY" IS VAGUE AND CONFUSING		
Proposed Rule § 1010.930(c)(2) **Failure to adhere to the plain meaning of the statute (vague and confusing)**		
AML Law **31 U.S.C. § 5323/** **Public Policy**	**Corresponding Proposed Rule**	**Comment**
The term "voluntary" is not defined in the AML whistleblower law.	"(2) *Voluntariness*. A whistleblower's submission of original information is voluntary if it is made prior to any request, inquiry, or demand about a matter related or relevant to the original information in the whistleblower's submission from Congress, any agency or authority, or a self-regulatory organization, to the whistleblower or the whistleblower's attorney or other representative, or in some circumstances to a whistleblower's employer." ***Proposed Rule: 31 C.F.R. § 1010.930(c)(2)***	The Proposed Rule is extremely vague and confusing. First, it uses the phrase "any agency or authority" without defining these entities. Second, the concept of "other representative" is vague and open to abuse. Finally, the Proposed Rule opens the door to abuse by permitting communications to a whistleblower's employer to disqualify a whistleblower. The confusing nature of this definition provides additional support for using the plain meaning of this term as defined in *Webster's Dictionary.* That definition ensures that a whistleblower disclosures which common sense would deem voluntary are covered, and prevents the application of an open-ended and confusing definition.

COMMENT 12 **FinCEN'S PROPOSED DEFINITION OF "VOLUNTARY" FAILS TO INCLUDE SUBMISSIONS TO OTHER AGENCIES AND OFFICES PERMITTED UNDER LAW**		
Proposed Rule § 1010.930(c)(2) **Failure to adhere to the plain meaning of the statute (voluntary submissions to third parties)**		
AML Law **31 U.S.C. § 5323/** **Public Policy**	**Corresponding Proposed Rule**	**Comment**
The term "voluntary" is not defined in the AML whistleblower law.	"(2) *Voluntariness*. A whistleblower's submission of original information is voluntary if it is made prior to any request, inquiry, or demand about a matter related or relevant to the original information in the whistleblower's submission from Congress, any agency or authority, or a self-regulatory organization, to the whistleblower or the whistleblower's attorney or other representative, or in some circumstances to a whistleblower's employer." ***Proposed Rule: 31 C.F.R. § 1010.930(c)(2)***	The Proposed Rule fails to create exceptions to the voluntary disclosure requirement necessary to implement the AML whistleblower law and public policies consistent with legislative intent. First, the AML WIA defines specific third-party entities that a whistleblower is permitted to initially report "original information" to and fully qualify for an award. 31 U.S.C. § 5323(a)(3)(C)(permitting FinCEN to pay awards based on "original information" initially contained in "a government report, hearing, audit, or investigation, or from the news media," provided that the whistleblower was the original "source" to these entities.) Voluntary disclosures to all the entities identified in 31 U.S.C. § 5323(a)(3)(C) should be considered "voluntary" for purposes of the AML WIA. These were the entities to which Congress anticipated that whistleblowers would provide "original information", and excluding these entities from the definition of "voluntary" would be counter to Congressional intent and sound public policy.

		Second, all the entities identified by the OECD as places where international whistleblowers initially report violations of the FCPA need to be classified as "voluntary" submissions. This would include foreign law enforcement agencies, internal compliance programs, NGOs, various U.S. government entities, and the news media. The OECD identified all these as entities where international whistleblowers made their initial disclosures. Not classifying voluntary disclosures to these entities as being "voluntary" pursuant to the AML WIA would result in large numbers of otherwise meritorious whistleblowers being disqualified simply because they did not understand that they needed to file a disclosure with FinCEN first. It is likely that the vast majority of whistleblowers living overseas will be unaware of complex or common-sense defying reporting requirements. This is why the OECD recommended "guidance" be made available to potential whistleblowers. While this recommendation should be followed, successfully providing "guidance" to the majority of critically important informants who reside in foreign countries, many of whom do not speak English, is an unrealistic goal. The goal of the AML WIA is to incentivize reporting and providing protection for whistleblowers. This cannot be done if large numbers of whistleblowers are considered "involuntary" and thus disqualified from an award, when in fact they voluntarily reported the crimes but made their initial disclosures to

		entities that by regulation (not statute) are not covered. The regulatory history of the SEC's definition of voluntary demonstrates that an overly broad definition of "voluntary" can have "unintended consequences" by disqualifying otherwise meritorious whistleblowers. During the 2010-11 rulemaking proceeding, one commentator explained that the initial definition of "voluntary" proposed by the SEC could result in the disqualification of whistleblowers who initially reported violations to U.S. government agencies outside of the SEC. This initial definition is similar to FinCEN's Proposed Rule. It required whistleblowers to have made a submission to the SEC before receiving a request, inquiry, or demand for information from the SEC. 76 Fed. Reg. 34306. Based on that comment, the SEC realized that its approach could deny coverage to numerous whistleblowers that Congress clearly intended to protect, including all the federal authorities identified in the statutory definition of "original information." *See,* 15 U.S.C. § 78u-6(a)(3) (Dodd-Frank Act). In response, the SEC created exceptions to its proposed rule, adjusting the definition of voluntary to cover reports to U.S. government agencies, compliance programs, and privately managed self-regulatory organizations and clarifying that information originally filed with these entities would be considered "voluntary" even if the SEC later subpoenaed these persons. 17 C.F.R. §

		240.21F-4(b)(2). The SEC explained why it was changing its initially proposed,very restrictive rule, as follows: "*We have also added to paragraph (2) a statement that a whistleblower's submission of information to the Commission will be considered "voluntary" if the whistleblower voluntarily provided the same information to one of the other authorities identified in the rule prior to receiving a request, inquiry, or demand from the Commission. This language is intended to respond to comments that, as proposed, our rule could have had the unintended consequence of precluding a submission from being considered as "voluntary" in circumstances where the whistleblower provided the information to another authority, the other authority referred the matter to the Commission, and our staff contacted the whistleblower before he or she had the opportunity to file a whistleblower submission with us."* 76 Fed. Reg. 31319, n.81 (emphasis added).

COMMENT 13 FinCEN SHOULD FOLLOW TAX COURT PRECEDENT ON THE SUBMISSION OF TCRs		
Proposed Rule §1010.930(b)(1)(i) should be modified to be consistent with the Tax Court's interpretation of the Department of Treasury/Internal Revenue Service's filing requirements for the Form 211.		
AML WIA 31 U.S.C. § 5323	**Corresponding Proposed Rule**	**Comment**
No specific requirement for submitting information to FinCEN.	"(i) Information must initially be submitted using FinCEN's "Tip, Complaint, or Referral" form (Form TCR)…" ***Proposed Rule:* 31 C.F.R. *§1010.930(b)(1)(i)*** Information initially filed with the DOJ, other components of Treasury, or an employer "must also [be] provid[ed to] FinCEN within a reasonable period of time to be eligible for award." **Proposed Rule: 31 C.F.R. *§1010.930(b)(2)***	FinCEN should follow the Tax Court's precedent regarding the mandatory time period to file a Form TCR.[15] Consistent with this precedent, an otherwise qualified whistleblower should not be disqualified for submitting a late TCR. The issue of timing when filing a Form TCR and Form 211 has been extensively adjudicated, due to the potential that by simply filing an application late a whistleblower could be subjected to disqualification. *See Whistleblower 21276-13W v. Commissioner of IRS*, 144 Tax Court 290, 300-302 (2015). The only court case on this issue was decided by the Tax Court. That Court carefully examined the timing requirements related to the filing of the IRS Form 211 and held that a late-filed Form 211 should not be used to disqualify a whistleblower. In this case, the whistleblowers filed their Form 211 "three months after the Targeted Business pleaded guilty."

[15] "TCR" stands for "Tip, Complaint, or Referral" and is the name of the form used to file claims with the SEC under Dodd-Frank. The TCR Form serves an identical purpose as a similar form used by the IRS under its whistleblower award law, known as a Form 211. FinCEN is proposing to follow a similar practice as the SEC and IRS under the AML WIA.

		Because the Form TCR was late-filed, the IRS argued that the information provided to an IRS agent in the course of an investigation was "not 'information brought to the Secretary's attention' (whistleblower information) for which petitioners can receive awards." However, like in the AML WIA, the Congressional statute did "not specifically include a timing requirement regarding when whistleblower information must be submitted to the Whistle-blower Office." The Tax Court thereafter rejected the IRS's argument that the "Whistleblower Office is the 'gatekeeper of information for purposes of non-discretionary awards,'" and that to be "eligible for an award" a whistleblower "must submit the whistleblower information to the Whistleblower Office on Form 211 before any IRS action or examination is carried out with respect to that information." The Tax Court held that a Form 211 filed *after* an enforcement action was completed was still proper, so long as the IRS could determine that the whistleblower was the source of the original information and would be otherwise qualified for an award. This precedent was well reasoned and should be followed by FinCEN.

COMMENT 14 **THE PROPOSED TCR RULE SHOULD NOT DISQUALIFY OTHERWISE MERITORIOUS WHISTLEBLOWERS WHO LATE-FILE THE REQUIRED FORM**		
The Proposed Rule on filing TCRs should conform to SEC case law waives timing requirements for TCR submissions when an applicant is an "otherwise meritorious whistleblower".		
AML Law **31 U.S.C. § 5323 (b)(1)**	**Corresponding Proposed Rule**	**Comment**
The AML WIA has no timing requirement for when a whistleblower must make a formal request for an award, or a formal disclosure of a violation of law, to the FinCEN Whistleblower Office.	"(i) Information must initially be submitted using FinCEN's "Tip, Complaint, or Referral" form (Form TCR)…" ***Proposed Rule: 31 C.F.R. §1010.930(b)(1)(i)*** Information initially filed with DOJ, other components of Treasury, or an employer "must also (b) provid(ed) [to] FinCEN without a reasonable period of time to be eligible for award." ***Proposed Rule: 31 C.F.R. §1010.930(b)(2)***	SEC precedent also supports the conclusion that a late filed Form TCR should not be grounds for denying an award. The SEC's initial TCR rule, approved in 2011, is similar to the current FinCEN Proposed Rule. It simply required that a whistleblower file his or her initial claim for an award using a Form TCR. This regulation, which did not contain a specific timing requirement, was confusing and resulted in prolonged litigation, including a misunderstanding that a whistleblower's first contact with the SEC had to be via filing a Form TCR even if the whistleblower directly contacted another component of the SEC to raise a concern. To fix this problem, the SEC amended its TCR regulation in 2020, acknowledging that many whistleblowers did not understand the TCR requirement, and requiring first contact with the agency to occur through a Form TCR was not workable or appropriate. 85 Fed. Reg. at 70932 (Nov. 5, 2020). The 2020 amendments added a new subsection to the regulation that required the Form TCR be filed within

		30 days of the whistleblower's first contact with the SEC, or, alternatively, within 30 days of "actual" or "constructive" knowledge of the filing requirement. 17 C.F.R. § 240.21F-9(e). Even this amended rule proved to be unworkable. Consequently, by case law the SEC has adopted a litigation-based rule to waive the TCR timing requirement, under which an "otherwise qualified" whistleblower will still qualify for an award regardless of when the Form TCR was filed. *Order Determining Whistleblower Award*, 2024 SEC LEXIS 787, at *5 n.6; *Order Determining Whistleblower Award*, Exchange Act Rel. No. 94398, 2022 SEC LEXIS 635, at *2, 10 (Mar. 11, 2022) (waiving the filing deadline for a whistleblower that filed *four years* after first notifying the Commission about their information and *after* the underlying enforcement action was completed); *Order Determining Whistleblower Award*, Exchange Act Rel. No. 90721, 2020 SEC LEXIS 5303, at *1-4 (Dec. 18, 2020) (waiving the filing deadline for a whistleblower nearly *two years* past the filing deadline); *Order Determining Whistleblower Award*, Exchange Act Rel. No. 90580, 2020 SEC LEXIS 5151, at *2 n.2, 3 n.3 (Dec. 7, 2020). Under the AML WIA, there should be no timing requirement tied to the filing

		of a Form TCR. Timely filing should be encouraged, and whistleblowers should be informed of this requirement when they contact various components of the Justice or Treasury Departments. But given the right of whistleblowers to make disclosures outside of the FinCEN office or internally within their company, a strict TCR requirement would be unworkable and act as a disincentive for whistleblowers. The best practice is to make it clear that FinCEN is following the Tax Court precedent. *See, Whistleblower 21276-13W,* 144 Tax Court, 300-302.

COMMENT 15 PROPOSED RULES DO NOT ADEQUATELY IMPLEMENT THE RIGHT TO MAKE AWARD-QUALIFYING DISCLOSURES INTERNALLY TO SUPERVISORS		
31 U.S.C. § 5323(b)(1) **The Proposed Rules must ensure that the statutory right to file complaints with a supervisor or a whistleblower's employer is fully protected, and that all procedural requirements conform with this right.**		
AML Law **31 U.S.C. § 5323 (b)(1)**	**Corresponding Proposed Rule**	**Comment**
"In any covered judicial or administrative action, or related action, the Secretary … shall pay award or awards to 1 or more whistleblowers who voluntarily provided original information to the employer of the individual."	The Proposed Rule does not provide a clear procedure recognizing the right of individuals to qualify for an award solely on the basis of an internal report. Furthermore, the Proposed Rule disqualifies or potentially disqualifies various individuals who may have engaged in internal disclosures from obtaining an award. ***Proposed Rule: 31 C.F.R. §1010.930 (b)(1)-(2) and (b)(5)(iii)***	Unlike Dodd-Frank, the AML Whistleblower Act explicitly requires awards to be given to individuals who make internal reports to their "employers." This provision statutorily overturned the Supreme Court decision in *Dig. Realty Trust, Inc. v. Somers,* 583 U.S. 149 (2018), which found that Dodd-Frank did not cover internal disclosures. The regulations must establish a clear procedure ensuring that individuals who make internal disclosures are protected. These should include: (1) Covering all employees, regardless of rank, class, position or job duties. This would include persons who work in compliance and persons hold executive positions, including directorships or company officers. (2) Ensuring that once an employee makes the protected internal disclosure, they will not be disqualified solely on the basis of delaying a report to the government. If a company self-discloses information based on an internal report, the internal whistleblower should be

		entitled to an award, even if they did not initially report the concern to the government. However, absent a direct report to the government by the whistleblower, the burden of proof to demonstrate that the whistleblower's internal disclosure triggered in disclosure to the government, or significantly contributed to the information in the self-disclosure. should rest with the whistleblower. Under such a rule, an internal whistleblower would not be automatically disqualified for delaying a report to the government, but there would be significant advantages in making such a timely report:being able to prove the substance of one's disclosures, working with the government to demonstrate the veracity of the allegations, and making sure that the company does not cover up the violations or improperly downplay the disclosures. (3) If a whistleblower disclosure initiates a self-report, FinCEN should also ensure that whatever credit is given to the company for self-reporting does not result in reductions to a whistleblower award (which can occur by paying the award at the 30% level, or reducing a corporate penalty below the award threshold. ********** In addition to the statutory right for employees to report internally and fully qualify for an award, public policy that strongly mandates that a waiting period for making a disclosure should not be implemented.

		It is against public policy (and the law) to approve any regulation that delays the reporting of crimes to appropriate authorities. Money laundering, terrorist financing, and sanctions violations are serious criminal offenses that can impact numerous potential victims, and any person, regardless of position, should be incentivized to report these crimes without delay. The U.S. Supreme Court affirmed this policy in 1895: *"It is the right, as well as the duty, of every citizen . . . to communicate to the executive officers any information which he has of the commission of an offense against those laws . . . The right does not depend upon any of the amendments to the Constitution, but arises out of the creation and establishment by the Constitution itself of a national government."* *In re Quarles and Butler,* 158 U.S. 532 (1895). This case is consistent with the Resolution of the Continental Congress enacted on July 30, 1778: "*It is the duty of all persons in the service of the United States, as well as all other inhabitants thereof, to give the <u>earliest information</u> to Congress or any other proper authority of any misconduct, frauds or misdemeanors . . .*" (emphasis added). There should be no limits placed on the right of directors, partners, officers, or compliance employees to make immediate disclosures to the government and qualify for an award. It should not matter how an employee

		learns of a violation. A timely disclosure should be encouraged without a whistleblower having to wait 120 days. If FinCEN decides to keep the 120-day rule, the current proposal still needs to be changed. The Proposed Rule does not include critically important exceptions contained in the SEC regulations. Under the SEC and Commodities Futures Trading Commission ("CFTC") regulations, if a Director, officer, partner, compliance official, etc. understands that there is a cover-up of the violation, they can immediately report the violation to the government. Likewise, if the violation is significant and can result in immediate harm, reports can be made without waiting the 120 days. Crimes such as terrorist financing, sanctions violations, and money laundering by criminal enterprises can result in immediate harm to the victims of these crimes. The regulations should encourage the immediate reporting of these types of offenses.

COMMENT 16 **FinCEN REGULATIONS GOVERNING WHISTLEBLOWER AWARD APPLICATIONS CAN ENSURE FAIR, TIMELY AND PROPER ADJUDICATIONS**		
Proposed Rule **Appendix B – WB-APP Application Form** **91 Fed. Reg. 16328, 16384-86** **FinCEN should use the WB-APP process to qualify award applicants who submit original information outside the formal TCR process. The WB-APP is the formal application form all individuals seeking a whistleblower award must file. These procedures are essential, as the AML WIA permits whistleblowers to file initial complaints to their employers, every component of the DOJ and Treasury Department, other government agencies, Congress and the news media.**		
AML Law **31 U.S.C. § 5323/** **Public Policy**	**FinCEN proposed rules** **§1010.930(d) and (e)**	**Comment**
"(b) AWARDS.- (1) IN GENERAL.- … shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the **employer** of the individual, the **Secretary**, or the **Attorney General**…" ****** **"(a)(3)(C)… [original information can be provided through disclosures made]** "in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media"… if the whistleblower is a source of the information."	"(1) *Timing.* A whistleblower must submit an application for an award based on a covered action to FinCEN no later than ninety (90) calendar days after the relevant notice of covered action was first published on a Department of the Treasury website… (2) *Form.* A whistleblower must submit an application for an award by completing FinCEN's "Application for Award for Original Information Submitted Pursuant to 31 U.S.C. 5323"	FinCEN's proposed rules for submitting an award application cover all the potential criteria necessary for the agency to make a determination as to the merits of an application. These rules are sufficient to determine award eligibility for whistleblowers who made their initial disclosures outside of the TCR process, and should be used for this purpose. The investigators responsible for an enforcement action know who the "real" whistleblowers are, and know the contributions (if any) made by each applicant. This is the core information necessary to make an award decision. The WB-APP process, which all applicants for an award must comply with, permits all potential whistleblowers to equally make their case.

	(''Form WB–APP''), or a successor form… ***Proposed Rule: 31 C.F.R. § 1010.930(d)*** *** (e) *Award adjudication.* After receipt of an award application: (1) Eligible whistleblower. FinCEN will determine pursuant to paragraph (c) of this section whether the whistleblower is eligible to receive an award… (ii) *Multiple whistleblowers.* If a whistleblower provides original information to (i) a component of the Department of Treasury; (ii) the DOJ, or (iii) their employer, then the whistleblower must also provide that same original information to FinCEN within a reasonable time to be eligible for an award." ***Proposed Rule: 31 C.F.R. § 1010.930(e)***	First, there is a mandatory deadline for filing an award application. SEC case law has strictly enforced this deadline, permitting no exemptions. This is fair. A public notice is posted giving all whistleblowers equal notice of the deadline. Second, there is a detailed application, which must be filed under oath. All documentary evidence must be produced at that time. All whistleblowers are required to submit the same application, and all have an equal opportunity to make their case. Third, the investigators responsible for the underlying investigation(s) and the underlying enforcement action will know which whistleblowers triggered an investigation or provided significant information used in the investigation. They will be able to advise the Office of the Whistleblower as to who should qualify for an award, and they can also rank levels of assistance. In this manner, whether a whistleblower worked with the DOJ, Treasury, DEA, or directly with FinCEN, the investigators will be able to determine who the qualified whistleblowers are. Fourth, a review of Appendix B (the WB-APP application) demonstrates that the FinCEN Whistleblower Office will obtain all of the information it needs to make award decisions, regardless of whether a whistleblower initiated their disclosure to their employer, Justice, Treasury, FinCEN, other federal or state agencies, the news media, or foreign law enforcement agencies. Using the WB-APP process to

		determine the eligibility of whistleblowers who did not file an initial TCR will award meritorious whistleblowers and avoid the unnecessary application of complex requirements that will in practice deny the majority of international whistleblowers. As discussed above, international whistleblowers are frequently the most important sources of information, and the most in need of protections and compensation. Furthermore, given the diversity of the types of disclosures permitted under the AML WIPA, it is incumbent upon Treasury and DOJ to coordinate the sharing of information. However, even if agencies do not communicate, the WB-APP application will permit the Whistleblower Office to obtain the information needed to reach out to other offices and make an award decision. In short, the WB-APP serves as an equalizer, permitting the Whistleblower Office to obtain standard information on every applicant in a timely manner and in a form that can be used to fairly make award decisions. If these best practices are followed, a process should be created for the maintenance of ongoing "whistleblower files" to assist in the timely review of the WB-APP applications.

COMMENT 17 **THE PROCESS FOR SUBMITTING ORIGINAL INFORMATION TO FinCEN AFTER CONTACTING OTHER AGENCIES IS UNDULY VAGUE**		
31 U.S.C. § 5323 (b) **Procedures for submitting original information to the DOJ or employers should not be subject to vague or disqualifying timing requirements.**		
AML Law **31 U.S.C. § 5323/** **Public Policy**	**Corresponding Proposed Rule**	**Comment**
"(b) AWARDS.- (1) IN GENERAL.- … shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the employer of the individual, the Secretary, or the **Attorney General**…"	"(2) *Original information must be submitted to FinCEN.* If a whistleblower provides original information to (i) a component of the Department of Treasury, (ii) the DOJ, or (iii) their employer, then the whistleblower must also provide that same original information to FinCEN within a reasonable time to be eligible for an award." ***Proposed Rule: 31 C.F.R. § 1010.930(b)(2)***	The Proposed Rule requires persons who report violations to the DOJ, components of the Treasury Department outside of FinCEN, or employers to thereafter report the same violations to FinCEN "within a reasonable time to be eligible for an award." This requirement shifts the burden of proof for inter-government communications from the government (whose agents should be trained) to lay whistleblowers, many of whom may be foreign nationals and who have no formal training in whistleblower procedures. For many whistleblowers, their initial report may be the very first time they ever filed a protected disclosure, and most may be acting without assistance of counsel. Even if they have attorneys, many attorneys are completely unfamiliar with the fairly obscure rules governing Dodd-Frank style disclosures. Finally, if someone reports money laundering by a drug cartel to the DEA or another agency and that disclosure results in a sanction, that whistleblower should obtain an award even if no initial complaint was filed with FinCEN.

		The appropriate deadline for filing with FinCEN must be the deadline for filing an award application, known as the WB-APP. These applications are filed after there is public notice that a sanction has been issued and the case involved potentially allows for the payment of a whistleblower award. This policy would give whistleblowers who filed with third-party agencies or departments an opportunity to learn that their disclosures may have resulted in a sanction and, accordingly, time to file for an award. After a whistleblower filed a WP-APP, FinCEN could contact the DOJ/FinCEN/IRS/Treasury investigators and determine whether or not that whistleblower's original information actually triggered the underlying investigation or significantly contributed to the investigation. The burden of proof on this issue should be on the whistleblower. If the various government investigators who received the disclosures cannot confirm that the whistleblower's information was relied on in the investigation, the award claim would be denied. But if these investigators can provide FinCEN with sufficient information necessary to qualify the whistleblower for an award, the award should be granted.

COMMENT 18 PROPOSED RULES MAY CAUSE UNDUE DELAY IN COMPENSATING WHISTLEBLOWERS		
Proposed Rule § 1010.930(e)(7) **Timing of Payment: Payments must be made without "undue delay"**		
AML Law **31 U.S.C. § 5323**	**Corresponding Proposed Rule**	**Comment**
The AML whistleblower law is silent on the amount of time needed to compensate a qualified whistleblower. The Administrative Procedure Act prohibits "undue delay" in compensating whistleblowers. 5 U.S.C. § 706(1).	"(7) *Timing of payment*. Payment of a whistleblower award for a monetary sanction collected in a covered action or related action shall be made following the later of: (i) The date on which the monetary sanction is collected; or (ii) The completion of the appeals process…" ***Proposed Rule: 31 C.F.R. § 1010.930(e)(7)***	The Proposed Rule does not set forth a clear deadline for the payment of awards. A similar lack of a clear deadline has resulted in undue delay in cases filed under the Dodd-Frank Act. A one-year deadline from the publication of a notice of covered action until a Final Order is issued would be reasonable, but any further delay would not. But, as explained below, if FinCEN were to follow the "best practices" recommended by the SEC Office of Inspector General ("OIG") when Dodd-Frank was under consideration by Congress, most awards could be issued within weeks of the collection of sanctions from a wrongdoer. FinCEN should review the legislative history of Dodd-Frank which explains Congress's intent that whistleblowers be paid when sanctions were collected to avoid undue delay, especially as many of these whistleblowers may be unemployed, blacklisted, or suffering under retaliation or threats of retaliation by authoritarian or corrupt governments. The legislative history of "undue delay" begins with the SEC OIG's

		report on an existing SEC whistleblower bounty program that was widely viewed as a failure. On March 29, 2010 the SEC OIG issued its report, recommending that the DOJ's "best practices" be incorporated into the administration of the new whistleblower program being debated in Congress (i.e.Dodd-Frank). *Assessment of the SEC's Bounty Program,* Report No. 474 (March 29, 2010) https://www.sec.gov/files/474.pdf. Recommendations 6-7 concerned record-keeping practices that would require "tracking tips" and maintaining "whistleblower complaint files" needed to determine whistleblower eligibility and enable the agency to pay whistleblower awards quickly. Whistleblower files were to include "any correspondence with the whistleblower, documentation of how the whistleblower's information was utilized, and documentation regarding significant decisions made with regard to the whistleblower's complaint." Congress was aware of these recommendations and approved them: "We also note a recent report of the current SEC insider-trading Whistleblower Program by the Office of Inspector General of SEC…In the report, the Inspector General recommends several important guidelines that any current or future SEC Whistleblower Programs should follow… incorporating best practices from DOJ and IRS's Whistleblower Programs…" S. Rep. 111-176 (2010), 111, https://www.congress.gov/111/crpt/srpt176/CRPT-111srpt176.pdf.

		Based on the recommendations of the SEC OIG and the "best practices" of the DOJ, Congress understood that awards under Dodd-Frank-style laws should be paid at the same time that sanctions are collected. As explained in the Senate Report, "Whenever a whistleblower or whistleblowers tip leads the SEC to collect sanctions and penalties that are determined to be distributed to the victims of the fraud, the intent of the Committee is to reward the whistleblower prior or at the same time as paying such victims, recognizing that were it not for the whistleblower's actions, there would have been no discovery of the harm to the investors and no collection of any sanctions for their benefit." *Id.* at 111-12. The AML WIA is modeled on Dodd-Frank. FinCEN should follow the "best practices" of the DOJ as they relate to the timing of whistleblower payments under the False Claims Act, which was the law both Congress and the SEC OIG looked toward when developing and implementing Dodd-Frank, and create an internal recordkeeping system to facilitate paying whistleblowers at the time that sanctions are collected. The DOJ has engaged in this practice for years and has been able to pay over $9 billion to whistleblowers in a timely manner. *See* DOJ Civil Division Fact Sheet, https://www.justice.gov/opa/media/1424121/dl.

COMMENT 19 **PROPOSED RULES NEED TO BALANCE THE NEED FOR AMNESTY WITH THE AML WIA'S GOAL OF INCENTIVIZING CULPABLE WHISTLEBLOWERS TO MAKE VOLUNTARY DISCLOSURES**		
Proposed Rule § 1010.930(h) **Any decision to prosecute a whistleblower must be weighed against the need to incentivize culpable individuals to make voluntary disclosures.**		
AML Law **31 U.S.C. § 5323/** **Public Policy**	**Corresponding Proposed Rule**	**Comment**
The AML whistleblower law incentivizes persons with culpability to report violations, but does not offer such individuals immunity from criminal liability.	"(h) *No amnesty*. The whistleblower program does not provide amnesty or immunity from any future investigation or prosecution by the Department of the Treasury, the Department of Justice, or any other agency or authority." ***Proposed Rule: 31 C.F.R. § 1010.930(h)***	When considering whether to prosecute a whistleblower, offer tools such as a Deferred Prosecution Agreement or proffer agreement, or grant a whistleblower full immunity, the Whistleblower Office and investigatory agents need to consider that the the *qui tam* award laws on which that the AML WIA is modelled were designed to incentivize persons with culpability to voluntary step forward and report their "co-conspirators." The SEC understood this underlying Congressional intent when enacting its Dodd-Frank rules. As explained by the SEC: *"As a preliminary matter, we do not believe that a per se exclusion for culpable whistleblowers is consistent with Section 21F of the Exchange Act. As commenters noted, the original Federal whistleblower statute—the False Claims Act—was premised on the notion that one effective way to bring about justice is to use a rogue to catch a rogue. This basic law enforcement principle is especially true for sophisticated securities fraud schemes which can be difficult for law*

		enforcement authorities to detect and prosecute without insider information and assistance from participants in the scheme or their coconspirators. Insiders regularly provide law enforcement authorities with early and invaluable assistance in identifying the scope, participants, victims, and ill-gotten gains from these fraudulent schemes. Accordingly, culpable whistleblowers can enhance the Commission's ability to detect violations of the Federal securities laws, increase the effectiveness and efficiency of the Commission's investigations, and provide important evidence for the Commission's enforcement actions." 76 Fed. Reg. 34350 The Commission cited directly to the legislative history of the original False Claims Act to make this point. Cong. Globe, 37th Cong., 3d Sess. 955–56 (1863) n. 389, quoting U.S. Senator Jacob M. Howard: ''I have based (the provisions of False Claims Act) on the old fashioned idea of holding out a temptation and 'setting a rogue to catch a rogue,' which is the safest and most expeditious way of bringing rogues to justice." Prosecuting a whistleblower could have a serious negative impact on the willingness of other whistleblowers to come forward. This Proposed Rule also implicates the policy of attempting to incentivize individuals who are part of a criminal conspiracy to come forward. Criteria should be developed to mitigate against an office's ability to initiate a prosecution that may be inconsistent with the purposes of the law, or interfere with

		the ability of other regulatory or law enforcement agencies to use the whistleblower as a witness. Before any law enforcement agency makes a decision to prosecute, the Whistleblower Office should be consulted and the legislative history behind awarding culpable whistleblowers should be considered.