NWC | NATIONAL WHISTLEBLOWER CENTER

May 7, 2026

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

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

RE: FIRST SUPPLEMENT

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

Dear Director Gacki:

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

Because the AML Whistleblower Improvement Act's ("AML WIA's") language is substantially similar to that of the Dodd-Frank Act, we have identified three Dodd-Frank regulations that should be incorporated into FinCEN's final rules. Attached to this letter are three appendices that track and compare the FinCEN proposed regulations with the current SEC Dodd-Frank regulations. These appendices are:

APPENDIX 1: TCR Rule

FinCEN is proposing to adopt a TCR filing rule that is similar to the SEC's TCR rule as originally published in 2011. 91 Fed. Reg. 16328 (April 1, 2026), 16377; Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34300 (June 13, 2011), 34368. However, after its initial publication, the SEC amended the rule in 2020 to create a more specific filing deadline. Whistleblower Program Rules, 85 Fed. Reg. 70898 (Nov. 5, 2020), 70945. The current FinCEN proposal does not have any explicit filing deadline, nor does it define the timeline for meeting a "reasonable time" for filing in §1010.930(b)(1) and (2). The attached proposal adds a new section to the FinCEN proposal, (b)(3), which gives clarity to the "reasonable time" for filing a TCR. With some modifications, it is based on the 2020 amendment to the SEC regulations that also added clarity to the deadline for filing a TCR.

Additionally, our proposal contains a new section, (b)(4). This section allows FinCEN to waive the TCR timing requirement if a whistleblower is otherwise qualified to obtain an award. This provision is based on SEC administrative case law, and balances two priorities. First, it keeps the TCR rule in place, which would assist in the administration of the law. But second, it permits an "otherwise meritorious" whistleblower to qualify for an award if they late-filed their TCR, as the SEC's administrative case precedents have consistently allowed. The public policy behind these precedents is simple: if a whistleblower's disclosures met all the other requirements in the law, then the public policy goals which motivate the TCR requirement have been accomplished. Given that

under the AML WIA, whistleblowers can qualify for an award if they make their initial disclosure to any component of the Justice or Treasury Departments or to their "employer," the need for this exception is critically important.

APPENDIX 2: 120-Day Delay Rule

FinCEN is proposing that certain employees and officials, such as directors or persons working with internal compliance programs, be required to delay their submission of a tip to the U.S. government for 120 days. § 1010.930(c)(5)(iii). This concept originated with the SEC's 2011 rules governing the Dodd-Frank whistleblower law. 76 Fed. Reg. at 34365. But unlike Dodd-Frank, the AML whistleblower law explicitly permits employees to make disclosures to their "employers" without any restrictions whatsoever. 31 U.S.C. § 5323(b)(1). For this reason, we strongly urge FinCEN to withdraw this proposal.

If this proposal is not withdrawn, it needs to be modified to be consistent with the SEC regulation. The SEC's 120-day rule included two exceptions. The first exception concerned the right to immediately report to the government if an immediate disclosure was needed to prevent a "substantial injury." In the context of sanctions violations, terrorist financing, and money laundering, this exception is urgently needed under the AML WIA. The second exception concerned evidence of a cover-up, which is also highly relevant to the conduct whistleblowers will report under the AML WIA. Both of these exceptions have been in place since 2011, and neither has been controversial. Both should be added if FinCEN adopts the 120-day rule.

We are also urging FinCEN to adopt a third exception if the 120-day rule remains. Under the Sarbanes-Oxley Act ("SOX"), U.S. internal whistleblowers are protected from retaliation within public companies. Thus, all persons covered under the SEC's 120-day rule have anti-retaliation protections. Unfortunately, the same cannot be said for individuals outside the U.S. who will report money laundering, terrorist financing, sanctions violations or other crimes covered under the AML whistleblower law. Employees who are not adequately protected from retaliatory actions if they raise concerns internally or are involved in internal investigations of reported violations should not be required or incentivized to disclose allegations to their employers. Any such rule places these persons at risk. Thus, we propose a third exemption, that would exempt persons working in countries that do not have anti-retaliation protections at least as effective as those in SOX from the 120-day rule.

APPENDIX 3: Confidentiality When Sharing Information

The AML whistleblower law contains explicit requirement protecting the confidentiality of information FinCEN shares with other governmental entities, both domestic and foreign. 31 USC § 5323(g)(4)(A). The Dodd-Frank whistleblower law contains an identical provision, 15 USC 78u-6(h)(2), and the SEC approved regulations that implement this statutory requirement. 17 C.F.R. § 240.21F-7(a). But in their current state, FinCEN's proposed rules *do not implement this mandatory statutory provision.* Compare SEC regulation § 240.21F-7(a) with FinCEN proposed rule § 1010.930(f)(1) and (2).

The resolution of this issue is very simple: FinCEN should adopt the current SEC rule on confidentiality. That rule incorporates the requirements set forth in the law, and there have been no complaints that this rule is unworkable. In fact, the SEC's handling of confidential whistleblower information has worked extremely well. Given the fact that the current FinCEN proposal actually permits information to be freely shared with foreign law enforcement agencies that may pose a threat to non-U.S. whistleblowers, adopting the SEC's confidentiality procedures is critically important.

Thank you in advance for your careful attention to these proposals.

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, at jeana.lee@whistleblowers.org or programs@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

ATTACHMENTS: APPENDIX 1: TCR RULE
APPENDIX 2: 120-DAY DELAY RULE
APPENDIX 3: CONFIDENTIALITY WHEN SHARING INFORMATION

APPENDIX 1
TCR RULE
31 C.F.R. §1010.930(b)(1) and (2)

Suggestion for Rule Modification

Proposed Rule: 31 C.F.R. §1010.930(b)(1) and (2) can be used as-is, with the one modification set forth below, and if the applicable regulations approved by the SEC are also incorporated into the final rule

(b)(1)(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.

(b)(2) Original information must be submitted to FinCEN. If a whistleblower provides original information to (i) a component of the Department of the Treasury other than FinCEN, (ii) the Department of Justice, 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. FinCEN will consider that the whistleblower provided original information as of the date of the whistleblower's first submission of the information to, as appropriate, a component of the Department of the Treasury other than FinCEN, the Department of Justice, or their employer. ~~As described in paragraph (c)(5)(iii) of this section, certain whistleblowers who obtain information from an entity's internal audit and compliance programs must wait at least one hundred and twenty (120) calendar days from the date they obtained the information before providing it to FinCEN to be eligible for an award~~

Add new section (b)(3) based on SEC rule 17 C.F.R. § 240.21-9(e), and (b)(4) based on SEC administrative case law.

(b)(3) *Reasonable time*.

You must follow the procedures specified in paragraphs (a) and (b) of this section within ~~30~~ 90 days of when you first provide the Commission with original information that you rely upon as a basis for claiming an award. If you fail to do so, then you will be deemed ineligible for an award in connection with that information (even if you later resubmit that information in accordance with paragraphs (a) and (b) of this section). Notwithstanding the foregoing, the Commission shall waive your noncompliance with paragraphs (a) and (b) of this section if:

Commented [AW1]: Initial text reflects the current language of the proposed rule as published by FinCEN, while the attached comments and text following red headings reflect our suggested changes.

Commented [AW2]: We recommend cutting these procedural requirements regarding the timing of TCR filings specifically for directors, officers, and compliance personnel. Issues related to their filing requirements should be addressed in a distinct regulatory provision related to directors and compliance personnel.

Commented [AW3]: To avoid prejudice and prevent the denial of fully qualified whistleblowers based on an untimely TCR filing, the exceptions to an identical TCR rule approved by the SEC, with minor adjustments, need to be included in the final rules.
The SEC approved 17 C.F.R. § 240.21-9(e) due to numerous problems with the administration of its initial TCR rule, which is nearly identical to the FinCEN proposal.
Section "(b)(3) Reasonable time" is taken directly from the current SEC rules, with minor adjustments. Section (b)(4) incorporates SEC case law on waivers related to late-filed TCRs.

Commented [AW4]: Section (b)(3) is taking verbatim from SEC rule 17 C.F.R. §240.21-9(e).
This provision was formally adopted by the SEC in 2020 to resolve practical implementation challenges regarding the TCR process, and has since functioned effectively in most cases.

(1) You demonstrate to the satisfaction of the Commission that you complied with the requirements of paragraphs (a) and (b) of this section within ~~30~~ 90 days of first obtaining actual ~~or constructive notice~~ about those requirements (or ~~30~~ 90 days from the date you retain counsel to represent you in connection with your submission of original information, whichever occurs first); and

(2) The Commission can readily develop an administrative record that unambiguously demonstrates that you would otherwise qualify for an award.

(b)(4) *Waiver.* A late-filed TCR shall not be grounds to deny an award to an otherwise qualified whistleblower.

Commented [AW5]: Because many of the whistleblowers reporting under FinCEN's rules will be based outside of the U.S. and may be represented by non-US lawyers who are unfamiliar with the technical rules governing the filing of a TCR, we recommend enlarging the amount of time in which a whistleblower can perfect their TCR from 30 to 90 days.

Commented [AW6]: The constructive notice provision in the SEC rules has historically been problematic. First, by the term's very nature, there is ambiguity as to what constitutes constructive notice. Second, although whistleblowers frequently consult with attorneys, these meetings are often in the context of employment cases or in discussions related to the whistleblowers' potential liability for making a disclosure such as a defamation claim, a data-breach claim, or a violation of bank secrecy laws related to filing a claim with FinCEN; such conversations often do not touch on whistleblower award programs. These issues are accentuated for non-U.S. whistleblowers, whose counsel would usually be unfamiliar with award filing procedures.

Commented [AW7]: Although a formal waiver provision is not yet explicitly codified in the SEC's text, the Commission has consistently applied this procedure through its adjudicatory case law.
Based on fifteen years of successful program management, we strongly urge FinCEN to formally codify this practice. This will provide much-needed regulatory certainty and prevent the disqualification of meritorious whistleblowers due to minor procedural irregularities.

Commented [AW7R2]: Waiver cases applicable to (b)(4) include: *Whistleblower 21276-13W v. Commissioner of IRS*, 144 Tax Court 290, 300-302 (2015); *Order Determining Whistleblower Award*, Exchange Act Rel. No. 99890 (Apr. 3, 2024); *Order Determining Whistleblower Award*, Exchange Act Rel. No. 94398, (Mar. 11, 2022); *Order Determining Whistleblower Award*, Exchange Act Rel. No. 90721 (Dec. 18, 2020); *Order Determining Whistleblower Award*, Exchange Act Rel. No. 90580 (Dec. 7, 2020).

APPENDIX 2

120-DAY DELAY RULE

31 C.F.R. § 1010.930(c)(5)(iii)

Suggestion for Rule Modification

Proposed Rule: 31 C.F.R. § 1010.930(c)(5)(iii) (should FinCEN adopt the 120-day requirement that directors and compliance officials must delay reporting money-laundering and sanctions violations to FinCEN). The below exceptions to the mandatory delay period are adopted directly from similar SEC regulations.

§1010.930(c)(5)(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 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."

(C) Exceptions. Subparagraphs (c)(5)(iii)(A) and (B) of this section shall not apply if:

(a) You have a reasonable basis to believe that disclosure of the information to ~~the Commission~~ FinCEN is necessary to prevent the relevant entity from engaging in conduct that is likely to cause substantial injury ~~to the financial interest or property~~ of the entity or investors.

(b) You have a reasonable basis to believe that the relevant entity is engaging in conduct that will impede an investigation of the misconduct; or

(c) The country in which the whistleblower is employed does not guarantee retaliation protections for internal whistleblowers equivalent to those guaranteed under 31 U.S.C. §5323 (g).

Commented [AW1]: As is discussed in other comments, because the AML whistleblower law explicitly covers internal reports, this 120-day provision (adopted from SEC regulations) would be inappropriate to include in FinCEN rules. Dodd-Frank does not cover internal reports, whereas the AML law does. Thus, anyone who works for their "employer" has a statutory right to file with FinCEN immediately.

Commented [AW2]: Initial text reflects the current language of the proposed rule as published by FinCEN, while the attached comments and text following red headings reflect our suggested changes.

Commented [AW3]: Exceptions (a) and (b) are included in SEC rule 17 C.F.R. §240-21F-4 (b)(4)(v); suggested edits amend that rule for the FinCEN context. If FinCEN is to adopt the 120-day delay rule, these exceptions must be included.

Commented [AW4]: We propose adding this exception to the two granted by the SEC. In contrast to Dodd-Frank, the AML program will serve a large contingent of international whistleblowers. Most internal whistleblowers in the U.S. are protected against retaliation by the AML whistleblower law, but most non-U.S. whistleblowers have either not protection or radically inferior protections to those in the United States. It would be detrimental to the enforcement of the AML laws to require or incentivize whistleblowers to make reports to their employers in contexts where whistleblowers are not adequately protected against retaliation.

APPENDIX 3
CONFIDENTIALITY WHEN SHARING INFORMATION

Suggestion for Modified Rule

FinCEN's rules should adopt the language on confidentiality from the SEC's current whistleblower rules, replacing relevant references to statutes and agencies. The following proposed language is based on the SEC's rule on confidentiality, 17 C.F.R. § 240.21F-7(a), with proposed edits to the SEC's language notated using strikethroughs (proposed deletions) and red text (proposed additions).

THE FOLLOWING SHOULD BE INCORPORATED DIRECTLY INTO FinCEN's REGULATIONS:

(a) Pursuant to Section ~~21F(h)(2)~~ 5323(g)(4) of the ~~Exchange Act~~ Anti-Money Laundering Act ~~(15 U.S.C. 78u-6(h)(2))~~ (31 U.S.C. § 5323(g)(4)(A)) ~~and § 240.21F-2(c)~~, the ~~Commission~~ Department of the Treasury and FinCEN will not disclose information that could reasonably be expected to reveal the identity of a whistleblower provided that the whistleblower has submitted information utilizing the processes specified in ~~§ 240.21F-9(a)~~, except that the ~~Commission~~ Department of the Treasury and FinCEN may disclose such information in the following circumstances:

(1) When disclosure is required to a defendant or respondent in connection with a Federal court or administrative action that the ~~Commission~~ Department of the Treasury and FinCEN files or in another public action or proceeding that is filed by an authority to which we provide the information, as described below;

(2) When the ~~Commission~~ Department of the Treasury and FinCEN determines that it is necessary to accomplish the purposes of the Exchange Act (15 U.S.C. 78a) and to protect investors, it may provide your information to the Department of Justice, an appropriate regulatory authority, a self regulatory organization, a state attorney general in connection with a criminal investigation, any appropriate state regulatory authority, the Public Company Accounting Oversight Board, or foreign securities and law enforcement authorities. Each of these entities other than foreign securities

Commented [AW1]: All changes simply conform the current SEC rule on confidentiality to FinCEN's statutory and regulatory references. The substance of the regulation published by the SEC is equally applicable to FinCEN, and simply incorporates the mandatory statutory requirements of Dodd-Frank regarding confidentiality, which are identical to those of the AML WIA.
The below text comes directly from SEC §240.21F-7(a).

Commented [AW2]: The referenced statute should be replaced with 31 U.S.C. § 5323(g)(4)(A) in the context of FinCEN regulations. The statutory basis for confidentiality protections in the Dodd-Frank Act is identical to that of the Anti-Money Laundering Act.

and law enforcement authorities is subject to the confidentiality requirements set forth in ~~Section 21F(h) of the Exchange Act (15 U.S.C. 78u-6(h))~~ (31 U.S.C. § 5323(g)(4)(A)). The ~~Commission~~ Department of the Treasury and FinCEN will determine what assurances of confidentiality it deems appropriate in providing such information to foreign securities and law enforcement authorities.

(3) The ~~Commission~~ Department of the Treasury and FinCEN may make disclosures in accordance with the Privacy Act of 1974 (5 U.S.C. 552a).

(b) You may submit information to the ~~Commission~~ Department of the Treasury and FinCEN anonymously. If you do so, however, you must also do the following:

(1) You must have an attorney represent you in connection with both your submission of information and your claim for an award, and your attorney's name and contact information must be provided to the ~~Commission~~ Department of the Treasury and FinCEN at the time you submit your information;

(2) You and your attorney must follow the procedures set forth in ~~§ 240.21F-9 of this chapter~~ (31 U.S.C. § 5323(g)(4)(A)) for submitting original information anonymously; and

(3) Before the ~~Commission~~ Department of the Treasury and FinCEN will pay any award to you, you must disclose your identity to the ~~Commission~~ Department of the Treasury and FinCEN and your identity must be verified by the Commission.