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

**RE: SECOND SUPPLEMENT – DEFINITION OF VOLUNTARY**

**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 supplemental comment (our second supplement and third overall comment) regarding the definition of “voluntary” in FinCEN’s proposed regulations implementing the AML Whistleblower Improvement Act (“AML WIA”). *See*, Notice of Proposed Rulemaking submitted by the U.S. Department of Treasury, Financial Crimes Enforcement Network (“FinCEN”), 91 Fed. Reg. 16328 (April 1, 2026).

This supplemental comment discusses the definition of the term “voluntariness.” The Proposed Rules define this term as follows:

*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.

§ 1010.930(c)(2).

**I. Excluding Third-Party Disclosures Will Disqualify Meritorious Whistleblowers**

All disclosures that constitute a submission of “original information” and are thereafter provided to Justice, Treasury, or FinCEN should be covered under the definition of voluntary, if the initial disclosure to these sources was in fact voluntary. FinCEN’s proposed definition of “voluntary” does not specify whether the “whistleblower’s submission” it references must be a submission to Justice or Treasury/FinCEN, or whether that “submission” can also mean a disclosure to a third party referenced in the AML WIA’s definition of original information. Only the latter interpretation is consistent with the public interest and the statute’s plain meaning.<sup>1</sup>

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<sup>1</sup> While NWC proposes language in Part IV of this comment to explicitly include third-party whistleblowers, this interpretation of “voluntariness” is required by the plain meaning of the AML WIA’s text even without our

The definition of “original information” in the AML WIA states that whistleblowers can disclose potential violations to the following entities, all of which should be included in any definition of voluntary:

(3) The term “original information” means information that—

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

(B) is not known to the Secretary or the Attorney General from any other source, unless the whistleblower is the original source of the information; and

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

31 U.S.C. § 5323(a)(3).

As referenced in this provision, Justice or Treasury/FinCEN will often learn of a whistleblower’s initial disclosure through a third party, such as the news media or another government agency. This can trigger a request for information from FinCEN to the whistleblower prior to the whistleblower making direct contact with FinCEN. If the whistleblower’s initial disclosure to the third party is not included within FinCEN’s definition of “voluntary,” these third-party disclosures can disqualify a whistleblower by triggering Justice or Treasury’s interest.

By counting third-party disclosures as “original information” through the “original source” exception in 31 U.S.C. § 5323(a)(3)(B) and (C), Congress clearly intended to qualify whistleblowers who disclose to these third parties for awards. A definition of “voluntary” that *disqualifies* these third-party whistleblowers contradicts this Congressional intention. In disqualifying whistleblowers who Congress clearly classified as eligible for awards, FinCEN’s definition of voluntary contradicts the plain meaning of the AML WIA’s definition of “original information” in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(a), and disqualifies whistleblowers who have historically provided critical information to regulators.

This is a legally impermissible result under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which held that courts must exercise independent judgment when determining whether an agency action violates a statute, rather than deferring to an agency’s “reasonable interpretation.” *Loper*, 603 U.S., at 394. FinCEN’s definition also fails to align with the judicial requirement that “courts must read a statute to give effect to all provisions and avoid rendering any part inoperative or superfluous, void or insignificant.” *Corley v. United States*, 556 U.S. 303 (2009), at 304.

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proposed language. The plain, common-sense meaning of “voluntary” as articulated in *Webster’s* and other standard dictionaries must be the controlling definition of “voluntary” for courts interpreting the AML WIA. *See, e.g., Voluntary*, Webster’s Third New International Dictionary (1986): “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 state of affairs.” We will expand on this argument in a future supplemental comment.

## II. The SEC’s Definition of “Voluntary” is Flawed

FinCEN’s proposed definition of “voluntary” is clearly based off the definition used by the SEC to implement the Dodd-Frank whistleblower program, which is worded differently but substantively similar. 17 C.F.R. § 240.21F-4(a)(1). However, the SEC’s definition of “voluntary” is deficient, has worked against Dodd-Frank’s policy goals, and has been subject to significant legal challenge. It should not be emulated by FinCEN.

Like FinCEN’s proposed definition, the SEC’s definition of “voluntary” does not say whether third-party disclosures can fulfill the “voluntariness” requirement. The SEC has used this ambiguity to disqualify third-party whistleblowers on the basis that the Commission contacted the whistleblower after their third-party disclosure, but before they made a submission to the Commission; this policy has led to significant public outcry. *See, e.g.,* Dave Michaels, *She Blew the Whistle on Deutsche Bank to the SEC. Her Award: \$0*. Wall Street Journal (May 4, 2026); and numerous briefs of *amici curiae*, *Doe v. SEC*, No. 23-1124, 2026 LX 275295 (D.C. Cir. Apr. 17, 2026).

Of particular interest on this issue is the D.C. Circuit’s recent decision in *Doe v. SEC*, 2026 LX (D.C. Cir. Apr. 17, 2026). *Doe* concerned a whistleblower whose initial disclosure was to the news media, and who was contacted by the SEC before they reported directly to the Commission. While the Court did not rule on whether the SEC’s definition of “voluntary” was consistent with *Loper*, they did clearly find that the Commission needed to seriously consider applying an exception to the “voluntary” requirement because the whistleblower’s disclosure was undoubtedly voluntary to the news media and served the public interest, and remanded the decision back to the Commission to consider the exception in more detail. *Doe*, 2026 LX, at 24.

While decided on narrow grounds, this ruling demonstrates the clear conflict between the SEC’s definition of “voluntary” and the goals of the SEC whistleblower program. Finding that the disclosures to the news media were voluntary was also consistent with the SEC’s own Policy Statement on the news media. 17 C.F.R. § 202.10 (“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”).

## III. Third-Party Disclosures Further the AML WIA’s Policy Goals

In 2022, the Organization for Economic Co-operation and Development conducted an audit studying the Dodd-Frank whistleblower law, upon which the AML WIA was largely modeled. This audit is highly relevant to the AML WIA, as it only covered Dodd-Frank whistleblower disclosures under the Foreign Corrupt Practices Act (“FCPA”), which frequently come from whistleblowers outside the United States. Like the FCPA, the AML WIA will work most effectively if it incentivizes and compensates non-U.S. persons, who are often in the best position to uncover money laundering violations or other violations covered under the AML whistleblower law.

Given the similarity of potential sources in FCPA and AML WIA cases, the OECD’s findings are critical to understand what types of disclosures must be covered under the AML WIA. While these data were not available to the SEC when creating rules under Dodd-Frank, FinCEN has the opportunity to apply the OECD’s findings in this rulemaking process. The OECD found the following proportions of initial tip sources in successful FCPA enforcement actions:

- 40% from whistleblowers.
  - Although the source from this category was not defined, it should be presumed that these came from disclosures to U.S. government entities, which would include the Justice Department and FBI officials stationed in embassies, as well as disclosures to other U.S. government entities such as the State Department;
- 20% from the news media.
  - In numerous foreign countries, disclosing information about corruption or bribery to the media is the most logical way for a whistleblower to call attention to corruption and trigger corrective action;
- 20% from reports to foreign law enforcement agencies or anti-corruption NGOs.
  - Similarly to the news media, whistleblowers unfamiliar with U.S. whistleblower programs would logically reach out to supportive NGOs for assistance, or directly report to foreign law enforcement agencies;
- 10% from corporate self-reports.
  - These disclosures most likely originated from a whistleblower directly disclosing potential violations to their employer. This type of disclosure is explicitly covered under the AML WIA and will be discussed further in Part II of this comment.<sup>2</sup>

Given the clear importance of tips from these third parties to transnational enforcement work, it is crucial that whistleblowers who report to these sources are not disincentivized from making disclosures. In order to effectuate the intent of Congress and ensure that all valid whistleblowers are fully protected under the AML WIA, whistleblowers who make voluntary disclosures to any of these OECD-identified sources of information must be classified as voluntary whistleblowers.

#### IV. Proposed Change

We propose adding the following section to FinCEN’s definition of “voluntariness”:

*Voluntariness.* A whistleblower's submission of original information is voluntary if it:

**(a) the whistleblower submits their information to their employer; to Congress; to a state, federal, or foreign government agency or authority; to a non-governmental organization; to the news media; in a judicial or administrative hearing; or through a governmental report, hearing, audit, or investigation; and**

**(b) the whistleblower’s submission to one of these entities 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**

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<sup>2</sup> 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](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).

organization, to the whistleblower or the whistleblower's attorney or other representative, ~~or in some circumstances to a whistleblower's employer.~~<sup>3</sup>

This change will definitively establish that a whistleblower's initial disclosure to a third party named in the AML WIA's definition of original information can qualify them as "voluntary."

It is extremely important to understand that even if a whistleblower's information is voluntarily provided to any of the entities described above, that **does not automatically entitle the whistleblower to an award**. The whistleblower still must demonstrate: (1) that they were an original source of the information; (2) that the DOJ or FinCEN relied on that whistleblower's information to sanction a wrongdoer for over \$1 million; (3) that the original information either triggered the investigation in question or "significantly contributed" to the investigation; and (4) that the whistleblower was not an otherwise disqualified person.

Through the WB-APP application process, FinCEN will be able to determine if the whistleblower's disclosure to one of these third parties was in fact the original information relied upon by the government, and the burden of proof on this issue would always remain on the whistleblower. Thus, the easiest and safest way to submit information to FinCEN will still be through a timely submitted TCR. But an otherwise meritorious whistleblower will not be denied an award if their initial, voluntary disclosure of "original information" to one of the sources traditionally used by whistleblowers commenced the series of events that ultimately resulted in the successful enforcement action. This is the result Congress intended, and it is the result that will lead the U.S. government to receive the maximum number of useful whistleblower tips.

## V. Conclusion

Thank you in advance for your careful attention to this proposal.

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](mailto:Stephen.kohn@kkc.com) or phone at 202-342-6980. You can also directly contact Alice Wanamaker, KKC's Public Interest Law Fellow; or Jeana Lee, the National Whistleblower Center's Program Manager; who are assisting me on these matters. Their emails are [Alice.Wanamaker@kkc.com](mailto:Alice.Wanamaker@kkc.com) and [Jeana.Lee@whistleblowers.org](mailto:Jeana.Lee@whistleblowers.org), respectively.

Respectfully submitted,

*/s/ Stephen M. Kohn*

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<sup>3</sup> NWC also has concerns about the phrase "in some circumstances to a whistleblower's employer" as employed in this definition. We will address these concerns in our next supplemental comment.