



The Honorable Scott Bessent  
Secretary  
U.S. Department of Treasury  
1500 Pennsylvania Avenue NW  
Washington, DC 20220

The Honorable Andrea M. Gacki  
Director  
FinCEN  
1500 Pennsylvania Avenue NW  
Washington, DC 20220

RE: Comment on “Whistleblower Incentives and Protections,”  
91 Fed. Reg. 16328 (Apr. 1, 2026) (Proposed Rule)

June 1, 2026

Dear Secretary Bessent and Director Gacki:

The Anti-Fraud Coalition (“TAF Coalition”) appreciates the opportunity to submit these comments to the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) on the above-referenced proposed rule (“Proposal” or “Proposed Rules”) under the Anti-Money Laundering Act of 2020 (“AML Act”) and the Anti-Money Laundering Whistleblower Improvement Act (“AML Whistleblower Improvement Act”), which were enacted into law as part of the National Defense Authorization Act for Fiscal Year 2021 (“FY21 NDAA”) and the Consolidated Appropriations Act of 2023. The Proposal would establish a whistleblower program to offer incentives and protections to encourage individuals who have information about potential violations of the Bank Secrecy Act (“BSA”), International Emergency Economic Powers Act (“IEEPA”), Trading With the Enemy Act of 1917 (“TWEA”), and Foreign Narcotics Kingpin Designation Act (“Kingpin Act,” and together with the BSA, IEEPA, and TWEA, the “Statutes”) to voluntarily report such information (the “Whistleblower Program”).

TAF Coalition generally supports the Proposal. To strengthen and clarify the Proposal’s terms, TAF Coalition makes the comments detailed below.



## **I. About TAF Coalition**

TAF Coalition is a public interest, non-profit organization dedicated to defending and empowering whistleblowers who expose fraud against the government and in the financial markets. Since 1986, our organization’s member lawyers have successfully partnered with federal and state law enforcement agencies in thousands of cases under the whistleblower provisions of the federal and state False Claims Acts, as well as the whistleblower programs of the Securities and Exchange Commission (“SEC”), Commodity Futures Trading Commission (“CFTC”), Internal Revenue Service (“IRS”), Department of Justice (“DOJ”), and FinCEN.

Representatives of TAF Coalition have been intimately involved in both the formation of and the revisions to various state and federal whistleblower programs including the FinCEN program at issue here, as well as those promulgated by the SEC, CFTC, and DOJ. Members of TAF Coalition have experience in helping amend provisions of the False Claims Act and the FinCEN whistleblower statutes as well as in establishing and improving the whistleblower programs established at the SEC and CFTC pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”).

As counsel for whistleblowers, TAF Coalition members interact daily with each of the federal government’s whistleblower award programs. The comments offered below are therefore informed by deep knowledge of, and experience with, the rules and processes of those programs. Using that baseline, our comments are intended to assist FinCEN with designing a best-in-class whistleblower program that incorporates best practices from its predecessors and maximizes FinCEN and DOJ’s ability to obtain time-sensitive, actionable information from whistleblowers around the world.



**II. Overall Comment: Much of the Proposal is strong but significant changes are needed to ensure that whistleblowers are properly incentivized to report, adequately protected, and appropriately awarded in the manner intended by Congress.**

TAF Coalition applauds FinCEN for including in the Proposal many common-sense provisions designed to promote the usability and flexibility of the program. The inclusion of a \$15 million threshold for a 30% award presumption, for instance, builds on the structure of a highly successful amendment to the SEC’s whistleblower program, while increasing the threshold amount in recognition of the unique aspects of FinCEN’s program. Similarly, providing that a whistleblower’s tip will be considered original information even if it comes to FinCEN from elsewhere, if the whistleblower was “a source” of the information, is an appropriate recognition of the myriad inputs that can make up reports or articles. This rule, as proposed, provides appropriate flexibility for recognizing the role that a whistleblower might play in an internal investigation, preserving the whistleblower’s award eligibility while encouraging cooperation with internal compliance procedures.

Unfortunately, as explained in greater detail below, FinCEN has made certain policy choices in the Proposed Rules that could undermine the program from its outset, and which are unnecessary or even counterproductive to the establishment of an efficient, effective program to identify violations of the Statutes. Some examples of particular importance to TAF Coalition members include:

- The exclusion of monies collected in bankruptcy from the definition of “monetary sanctions” in 31 C.F.R. § 1010.930(a)(7). Such an exclusion would needlessly duplicate one of the biggest flaws in the SEC’s rules and jeopardize the effectiveness of the Whistleblower Program by punishing whistleblowers when a company enters bankruptcy as a result of its violative conduct (or the disclosure



thereof). That would materially disincentivize whistleblowers in priority areas for FinCEN such as AML failures by lightly capitalized market participants including FinTech startups.

- Similarly, the exclusion from the same definition of monies sent to the U.S. Victims of State Sponsored Terrorism Fund (“USVSSTF”). The Proposed Rule is contrary to authorizing statute and inconsistent with the goals of the Whistleblower Program. Moreover, the threat of a significant award reduction as a result of the proposed exclusion will significantly diminish incentives for whistleblowers in priority areas such as terrorist financing or Iranian sanction evasion.
- The potential ineligibility, pursuant to proposed 31 C.F.R. § 1010.930(c)(5)(iv)(A)(3), of a whistleblower who obtains information in violation of state or federal criminal law. As drafted, this provision could render a whistleblower ineligible for an award for providing FinCEN with a recording of a critical meeting or phone call, or even for submitting a tip that references a specific Suspicious Activity Report (“SAR”). Such a provision is inconsistent with best practices from existing whistleblower programs and would necessarily deprive FinCEN of important tips and evidence.
- The provision under proposed 31 C.F.R. § 1010.930(c)(5)(i)(B), rendering ineligible for an award any whistleblower convicted of a criminal violation “related to the covered action or related action.” Such a broad exclusion undermines the intent of the program to attract those best positioned to report violations, as it threatens to deny an award to an otherwise meritorious whistleblower who is convicted of a minor or tangentially related crime,



potentially in a jurisdiction or forum totally unrelated to the covered or related action.

- Proposed 31 C.F.R. § 1010.930(e)(3)(v)(D), which would purport to allow FinCEN to pay an award of less than the 10% statutory minimum for a covered action under some circumstances when there is an award from another agency’s whistleblower program. Any such provision would violate the AML Act’s “shall pay” requirement and would be legally vulnerable as an abuse of FinCEN’s authority under the Administrative Procedure Act. *See Loper Bright Enterprises, et al. v. Raimondo*, 603 U.S. 869, 144 S. Ct. 2244 (2024).
- Proposed 31 C.F.R. § 1010.930(f)(2)(ii), which would allow FinCEN or DOJ to share a whistleblower’s information with witnesses or defendants, including the whistleblower’s employer, without any restrictions or obligation to protect the whistleblower’s identity. Confidentiality and anonymity are critical components of a successful whistleblower program. Anything that undermines whistleblowers’ confidence in those elements will materially reduce the effectiveness of the program. At best, whistleblowers will report their information to other programs; at worst, they will avoid reporting to the government all together out of fear that their information and identity may at some point become subject to FinCEN’s weak protections. There is absolutely no reason FinCEN cannot still accomplish its admirable policy goal of facilitating investigations and settlements while maintaining substantial protection to whistleblowers’ anonymity and confidentiality.

In many other areas, the Proposed Rules include significant ambiguity or subjectivity that could undermine the program by discouraging whistleblowers from coming forward, or punish



meritorious, good-faith whistleblowers for technical missteps. Among the provisions that raise these concerns are:

- The requirement in multiple places that a whistleblower certify that their information is “complete,” which is an unworkable standard for both the whistleblower and FinCEN. We suggest, consistent with existing legal standards, that it be replaced with a certification that the relevant submission does not omit any information necessary to make the submission not misleading.
- The definition of “original information” in proposed 31 C.F.R. § 1010.930(a)(8)(ii), pursuant to which information would not be considered “original” if it is “available through the sources reasonably accessible to [Treasury or DOJ] in the normal course of their job duties.” The term “sources reasonably accessible” is overbroad, ambiguous, and highly subjective, and, as written, could include vast amounts of both public and non-public data.
- The proposal, pursuant to 31 C.F.R. § 1010.930(c)(2), that a whistleblower’s submission not be treated as “voluntary” if the whistleblower received a request from the government in a “related or relevant” matter. The current language used in the Proposal is broader and less well defined than the equivalent language in other programs. This overbroad and subjective language needlessly discourages whistleblowers from coming forward with information that could alert FinCEN to potentially fruitful new investigative paths. TAF Coalition suggests that FinCEN mirror the SEC language on “voluntariness” instead of broadening the exclusions. *See* 17 C.F.R. § 240.21F-4(a)(1).
- Proposed 31 C.F.R. § 1010.930(a)(3)(iii), under which two or more actions would only be considered part of the same Covered Action if they occur at “substantially



the same time.” This language is too narrow and fails to consider the real and common circumstances that lead to sometimes significant gaps in time between actions growing out of the exact same course of conduct.

In addition to the above, TAF Coalition members support many of the issues raised by other letters submitted in response to the Proposal. TAF supports many of the provisions raised by the National Whistleblower Center (“NWC”) in its letters dated April 30, 2026; May 7, 2026; May 12, 2026; and May 13, 2026. While this letter addresses similar comments with respect to certain provisions, including confidentiality protections for whistleblower information,<sup>1</sup> the need for more clarity on the “within a reasonable time” standard,<sup>2</sup> and flaws in the 120-day delay framework for certain whistleblowers,<sup>3</sup> for reasons of economy not all the issues are reiterated in this letter. Specifically, TAF Coalition associates itself with NWC’s comments concerning the lack of appropriate protections for international whistleblowers,<sup>4</sup> the need to provide a mechanism for reporting directly to DOJ,<sup>5</sup> and the necessity of ensuring timely payment to whistleblowers without undue delay.<sup>6</sup> TAF furthermore supports those points raised by the May 28, 2026 Letter submitted by Lowell and Associates, PLLC, and signed by Jason Zuckerman, Matthew Stock, and Caleb Hayes-Deats, which raises important point regarding the misaligned incentives created by excluding USVSSTF funds from the definition of “monies.”<sup>7</sup> TAF additionally supports the comments raised by Constantine Cannon LLP, a TAF Coalition

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<sup>1</sup> See generally, Stephen M. Kohn, Chairman of the Bd. of Dirs., Nat’l Whistleblower Ctr., Comment on Proposed Rule for Whistleblower Incentives & Protections, FinCEN (Apr. 30, 2026), <https://www.whistleblowers.org/wp-content/uploads/2026/05/FinCEN-Comments-from-NWC-April-30-2026.pdf>.

<sup>2</sup> *Id.* at 61-3.

<sup>3</sup> *Id.* at 39-40, 56-8.

<sup>4</sup> *Id.* at 10-26, 47-50.

<sup>5</sup> *Id.* at 26-8.

<sup>6</sup> *Id.* at 65-7.

<sup>7</sup> See generally, Jason Zuckerman et al., Comment on Proposed Rule for Whistleblower Incentives & Protections, FinCEN (May 28, 2026).



member, in their comments submitted on May 29, 2026.<sup>8</sup> Finally, TAF wishes to specially recognize the important points raised by Senators Fetterman and Grassley in their letter dated February 3, 2026, urging the adoption of final rules for the Whistleblower Program that are whistleblower-protective, with strong enforcement mechanisms.<sup>9</sup> TAF appreciates the Senators continued dedication to ensuring the Whistleblower Program is as strong as possible, and to whistleblowers more generally.

Below, we address the Requests for Comment in the Proposal, including expanded responses relating to each of the above points. In addition, we suggest several technical and linguistic changes to increase the clarity and administrability of the Whistleblower Program. Members of TAF Coalition have always worked collaboratively with federal agencies as partners in ensuring that their whistleblower programs operate effectively and efficiently, protecting and supporting whistleblowers, all the while responsibly stewarding taxpayer funds. Our comments are offered in that spirit of partnership. We look forward to continuing to work with FinCEN as it moves towards adoption of final rules for the Whistleblower Program.

**III. Response to Request for Comment 1: TAF Coalition generally supports the proposed definitions in 31 C.F.R. § 1010.930(a) with minor modifications.**

FinCEN requested comments on whether the proposed definitions were sufficiently clear and specific. We think that they generally are. However, we note the following areas for improvement, with some suggested language:

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<sup>8</sup> See generally, Gordon Schnell, Comment on Proposed Rule for Whistleblower Incentives & Protections, FinCEN (May 29, 2026).

<sup>9</sup> Letter from John Fetterman, U.S. Senator, & Charles E. Grassley, Chairman, Comm. on the Judiciary, to Scott Bessent, Sec’y, Dep’t Treasury, & Andrea Gacki, Dir., FinCEN, (Feb. 3, 2026), <https://www.fetterman.senate.gov/wp-content/uploads/2026/02/Fetterman-Grassley-Letter-to-FinCEN-on-Whistleblower-Program-2-3-2026.pdf>.



- 31 C.F.R. § 1010.930(a)(3): “Covered Action.” TAF Coalition has several suggestions related to this definition.
  - 31 C.F.R. § 1010.930(a)(3)(ii): TAF Coalition does not disagree with the exclusion of actions brought by the IRS for the purpose of determining covered actions. However, TAF Coalition urges FinCEN to include a provision requiring the agency to disclose to the whistleblower when a referral to the IRS (or any other investigating agency with a whistleblower program) has been made.
  - 31 C.F.R. § 1010.930(a)(3)(iii): Please see comments to Request for Comment 2, below, regarding the question of “substantially the same time.” In addition, TAF Coalition disagrees with FinCEN’s decision to make it discretionary whether two or more actions “may” be treated as a single covered action. Furthermore, no criteria or guidance is provided for when FinCEN will exercise this discretion. TAF Coalition suggests discretion is inappropriate here. Instead, TAF urges FinCEN to strike the word “may” and replace it with “shall.”
- 31 C.F.R. § 1010.930(a)(7): “Monetary Sanctions.” TAF Coalition has a number of suggestions related to this definition.
  - TAF Coalition suggests that the definition should include monies recovered in bankruptcy proceedings, in addition to monies recovered in a “covered action or in a related action.” The perils of omitting bankruptcy recoveries from this definition were illustrated by a 2024 Fifth Circuit decision, *Barr v. SEC*,<sup>10</sup> in which highly meritorious SEC whistleblowers saw their awards reduced by over 90% when the company that committed fraud declared bankruptcy.<sup>11</sup>

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<sup>10</sup> 114 F.4th 441 (5th Cir. 2024), *cert. denied*, 146 S. Ct. 110 (2025).

<sup>11</sup> See Andrew Feller & Geoff Schweller, *Fifth Circuit Ruling Underscores a Shortcoming of the SEC Whistleblower Program*, THE CLS BLUE SKY BLOG, COLUM. UNIV. (Sept. 24, 2024),



Whistleblowers should be able to collect rewards on amounts related to their whistleblower disclosures recovered by the federal government or victims of fraud through bankruptcy proceedings. The financial result is the same for the United States whether proceeds are collected inside or outside of a bankruptcy proceeding. The loophole created by excluding bankruptcy recoveries from the definition of “monetary sanctions” creates deleterious incentives for less scrupulous companies to choose bankruptcy to deprive whistleblowers of awards they are entitled to by statute and disincentivizes whistleblowers from reporting fraud when filing a tip might drive the subject company into bankruptcy.

- This loophole can be closed by (1) amending the definition of “related action” under 31 C.F.R. § 1010.930(a)(9) to specifically include bankruptcy proceedings as a “judicial or administrative action brought by an appropriate agency or authority” and (2) amending the definition of “monetary sanctions” under 31 C.F.R. § 1010.930(a)(7) to include distributions made in a bankruptcy proceeding when a whistleblower’s information has led to the distribution. This solution will have no effect on restoring victim funds and will bring the treatment of whistleblowers under the Statutes in line with the treatment of False Claims Act whistleblowers, who are able to receive rewards on bankruptcy distributions resulting from their efforts.<sup>12</sup>
- In the comments explaining 31 C.F.R. § 1010.930(a)(7), FinCEN writes that FinCEN will interpret monies collected by the U.S. Victims of State Sponsored

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<https://clsbluesky.law.columbia.edu/2024/09/24/fifth-circuit-ruling-underscores-a-shortcoming-of-the-sec-whistleblower-program/>.

<sup>12</sup> See 31 U.S.C. § 3730(c)(5) (detailing the relator’s right to share in the recovery of an alternative remedy pursued by the Government).

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Terrorism Fund (“USVSSTF”) to be “victim compensation payments under the proposed rule and thus excluded from the definition of monetary sanctions.” TAF Coalition members have grave concerns about this interpretation, and fully support the comment letter submitted by TAF Coalition members Caleb Hayes-Deats, Jason Zuckerman, and Matthew Stock on May 28, 2026, in which they explore in detail the legal and policy concerns with the Proposed Rule. As recognized in that letter, FinCEN’s proposal will hurt victims of terrorism, rather than help them, because it will vastly reduce the incentive to report violations of Iran sanctions, as opposed to Russia or North Korea sanctions.<sup>13</sup> The same amount will go to the USVSSTF regardless of how FinCEN calculates the basis for awards, so FinCEN should adopt the approach that incentivizes reports, without which victims will receive nothing.

- 31 C.F.R. § 1010.930(a)(8): “Original Information.” TAF Coalition has a number of suggestions related to this definition.
  - For 31 C.F.R. § 1010.930(a)(8)(ii): This provision, as written and consistent with the authorizing statute, excludes only information that is *actually* known to Treasury or DOJ. However, in the released text, FinCEN suggests that information would not be considered “original” if it is “available through the sources reasonably accessible to [Treasury or DOJ] in the normal course of their job duties.” TAF Coalition respectfully suggests that such an interpretation goes far beyond the statutory language, is unworkably broad, and creates an internal contradiction with 31 C.F.R. § 1010.930(a)(8)(ii). Most information can be

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<sup>13</sup> Jason Zuckerman, et al., Comment on Proposed Rule for Whistleblower Incentives & Protections, FinCEN, 2-3 (May 28, 2026).



considered “reasonably accessible” to Treasury officials, who in addition to having internet access also have access to vast swathes of supervisory data through, for example, the Office of the Comptroller of the Currency (“OCC”), which often has designated staff embedded in banks. By contrast, the SEC’s parallel rule appropriately focuses on the value of the whistleblower’s analysis, rather than the source, by providing that independent analysis may be based on publicly available information if it “reveals information that is not generally known or available to the public.”<sup>14</sup> FinCEN should confirm in any adopting release that “known to Treasury or DOJ” means that not just the raw information, but the analysis revealing its implications, must be within the contemporaneous, actual knowledge of an identifiable person at the relevant agency.

- For 31 C.F.R. § 1010.930(a)(8)(iii): TAF Coalition agrees with this articulation of the original source exception and commends FinCEN for recognizing whistleblowers who are “a source” of the information, rather than “the source.” The “a source” standard will increase the efficiency of the Whistleblower Program while appropriately recognizing that whistleblowers often provide key insights that form part of a mosaic of evidence of wrongdoing.
- For 31 C.F.R. § 1010.930(a)(8)(iii): However, TAF Coalition disagrees with FinCEN’s decision to go beyond the statutory language to add “or any other publicly available source” to the limitations on original information. This vague and all-encompassing statement goes far beyond statutory bounds. The vagueness could easily lead to a significant amount of litigation and disagreement between

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<sup>14</sup> 17 CFR § 240.21F-4(b)(3).



the agency and whistleblowers over whether a document is sufficiently “public” to qualify.

**IV. Response to Request for Comment 2: TAF Coalition suggests eliminating the restriction that two or more actions are resolved at “substantially the same time” to be considered a single covered action.**

TAF Coalition suggests that this is an area that would benefit from significantly more clarity in the proposed regulations. Whether multiple actions are resolved at “substantially the same time” is both a highly subjective standard and one that is ill-designed to accomplish FinCEN’s policy objectives. As an initial matter, it is often true that associated matters simply are not resolved at or near the same time. This is frequently true, for example, when there is both corporate and individual liability. In the SEC context, it is not uncommon for the agency to resolve questions of corporate enforcement actions significantly before the Justice Department resolves any criminal actions against individuals.<sup>15</sup> In some instances, those actions can be separated by years. Generally, the SEC waits until all associated matters are resolved before issuing a NOCA.<sup>16</sup>

Equally importantly, if FinCEN imposes an artificial time limit on when actions can be considered collectively for the purposes of crossing the threshold, whistleblowers are likely to be shut out for arbitrary reasons. Indeed, the rule, as proposed, would *disincentivize* reporting of violations where there are readily identifiable individual perpetrators, given the likelihood that multiple actions against individuals will be resolved over a long period of time. Thus, TAF

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<sup>15</sup> See e.g., Office of Chief Counsel, *Enforcement Manual*, SECURITIES & EXCHANGE COMMISSION DIVISION OF ENFORCEMENT, 80-83, <https://www.sec.gov/files/enforcementmanual.pdf> (Feb. 24, 2026) (detailing parallel investigations and the ability of the SEC to share information gathered in its investigations with other government agencies).

<sup>16</sup> As an example, on June 30, 2025, the SEC issued Notice of Covered Action 2025-156. This covered three separate actions that had been resolved between September 2021 and May 2025. None of those actions were sufficient to cross the \$1 million threshold alone. But collectively they were worth more than \$1 million.



Coalition suggests FinCEN follows the SEC’s lead in not imposing any time limit for when actions can be considered collectively for the purposes of crossing the threshold.

**V. Response to Request for Comment 3: TAF Coalition supports proposed 31 C.F.R. § 1010.930(b)(2) with minor modifications.**

TAF Coalition appreciates FinCEN’s recognition that the vast majority of whistleblowers report internally to their company first before seeking government intervention after a company fails to adequately respond. TAF Coalition further appreciates that for this subsection to be workable, whistleblowers who seek awards must provide this information to FinCEN. However, TAF Coalition is concerned that the proposal that a whistleblower who first reports information internally must submit the same information to FinCEN “within a reasonable time” is too vague and will likely discourage internal whistleblowing, contrary to the intent of the statute and Proposed Rules. A rational whistleblower will avoid internal reporting if a later report to FinCEN can be declared “too late” based on an undefined—and possibly shifting—standard. TAF Coalition appreciates that FinCEN intends to provide further guidance, but such guidance would be non-binding and subject to change. For the sake of clarity, TAF Coalition recommends such a time limit be put into the regulations themselves. TAF Coalition suggests a time limit of 120 days would be a reasonable amount of time to require a report to FinCEN following an internal report.

However, this requirement would then run afoul of the other time restriction in this section—the requirement that certain individuals wait 120 days before submitting their information under 31 C.F.R. § 1010.930(c)(5)(iii). Please see TAF Coalition’s comments in Section VI *infra* regarding this provision.

**VI. Response to Request for Comment 4: TAF Coalition suggests the following modifications to 31 C.F.R. § 1010.930(c)(5).**

Under 31 C.F.R. § 1010.930(c)(5)(B)(iii), FinCEN proposes requiring certain whistleblowers in internal audit and compliance functions to wait to present their information to



the government for 120 days. In the comments, FinCEN states that such a waiting period is meant to allow time for the company to cure the violation.

TAF Coalition members know from our longstanding work with whistleblowers in various companies and in various industries that these types of waiting-period requirements are usually based on an unfortunately wrong assumption that the company is interested in addressing internal whistleblower complaints. Too often, companies use these waiting periods to fire whistleblowers or otherwise retaliate against them for raising concerns. All the while, the government suffers from not learning in a timely manner about the fraud.

TAF Coalition thus suggests that there needs to be some modification or contingency in the 120-day waiting period to allow whistleblowers to report earlier if they have tried to alert their company and the company has failed to respond. For example, if the Chief Executive Officer or a member of the Board has told a whistleblower that there will be no fix, then the waiting period serves no purpose except to delay a government investigation. And, at worst, this waiting period provides nefarious companies or executives the opportunity to destroy evidence and continue harming both consumers and the financial system. Instead, FinCEN should follow existing best practices and adopt a rule similar to the SEC's 120-day rule, which includes exceptions giving whistleblowers the right to immediately report to the government if an immediate disclosure is needed to prevent a "substantial injury," or in circumstances where there is evidence of a cover-up.<sup>17</sup> These exceptions have existed since the outset of the SEC program and have proved highly workable. And both exceptions are highly relevant in the AML and sanctions context.

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<sup>17</sup> 17 C.F.R. § 240.21F-4(b)(4)(v).



TAF Coalition also has numerous concerns about 31 C.F.R. § 1010.930(c)(5)(iv), which lays out other bases for whistleblower ineligibility. Some of these provisions create dangerous disincentives and create unworkable standards for whistleblowers.

First, and perhaps most concerning, is 31 C.F.R. § 1010.930(c)(5)(iv)(A)(3). This provision currently provides that whistleblowers are ineligible if they are found to obtain original information in a manner that violates state or federal criminal law. The Proposed Rule is highly problematic as a threshold matter, because whistleblowers often collect records without the permission of the company committing fraud who then may be motivated to seek spurious criminal charges against the whistleblower. Furthermore, there is no materiality or relevance limitation on this prohibition, raising the prospect that, for instance, a whistleblower might be ineligible if a state court finds that they were not entitled to take one document, despite FinCEN's or DOJ's case being based on a trove of other documents provided by the whistleblower. TAF Coalition strongly believes that such a circumstance should not invalidate the whistleblower's entire claim to original information. Under the Proposed Rules, just such a possibility is unfortunately possible, as there are often conflicting rules related to whistleblowers taking documents to provide them to the government. Whistleblowers are generally protected in doing so, for the public interest in exposing corporate fraud and aiding government investigations.<sup>18</sup> However, that public interest exception may conflict with local laws, or with the law enforcement agenda of another jurisdiction or political entity. Notably, other whistleblower programs do not include a limitation similar to 31 C.F.R. § 1010.930(c)(5)(iv). Quite the opposite: The SEC, for example, explicitly protects whistleblowers against retaliation for taking

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<sup>18</sup> Moreover, the government is clearly permitted to use such information, as recognized in *Burdeau v. McDowell*, 256 U.S. 465 (1921) (holding that evidence obtained by a private individual without government participation is admissible in a federal criminal case, even if obtained unlawfully).



internal records and providing them to the SEC.<sup>19</sup> Therefore, we suggest removing 31 C.F.R. § 1010.930(c)(5)(iv) altogether.

Proposed 31 C.F.R. § 1010.930(c)(5)(iv)(A)(3) also raises particularly relevant concerns in the context of recorded conversations. Whistleblowers, particularly before they have reached out to attorneys, may record conversations without a full understanding of the different and conflicting state recording laws. While federal law is one-party consent, not all states are.<sup>20</sup> The jurisdictional issue is compounded by non-US jurisdictions, from which FinCEN should both want and expect whistleblowers given the nature of the Statutes. Globally, there are a variety of specific and detailed rules about recording conversations, some with strict consequences for violations. It is thus not uncommon for a whistleblower to have recorded a critically important conversation legally under federal law, while exposing him or herself to potential legal repercussions in another jurisdiction. Any such jurisdiction finding the recording was illegal does not affect its validity in a federal investigation and should not invalidate the whistleblower's eligibility for an award.

Second, TAF Coalition also believes that 31 C.F.R. § 1010.930(c)(5)(iv)(B)(3), which invalidates a whistleblower that “[k]nowingly and willfully omits any fact,” is too broad a rule. In our experience, whistleblowers do their best to provide relevant information to the government. However, whistleblowers—and particularly those without counsel, such as those who are reporting ongoing or imminent violations—may not include all information of which they are aware, potentially due to timing concerns, lack of sophistication about the legal or factual predicates of a violation, or due to a mistaken assessment of relevance. Whistleblowers may thus “willfully” omit a fact, but not for any reason that FinCEN’s rules should seek to

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<sup>19</sup> See 15 U.S.C. § 78u-6(h)(i) (protecting whistleblowers from retaliation for providing information to the SEC).

<sup>20</sup> 18 U.S.C. §§ 2510, 2511; *see e.g.*, CAL. PENAL CODE § 632(a); FLA. STAT. § 934.03(2)(d).



punish or prevent. TAF Coalition suggests that this rule should have some sort of actual malice or intent standard beyond knowingly and willfully, as that risks punishing whistleblowers for their ignorance, not intent. Furthermore, TAF Coalition suggests such a standard may be impossible to adjudicate in many cases. A whistleblower will surely struggle prove the negative, i.e., that the omission was not, in fact, knowing. FinCEN would be forced to engage in a level of intent-analysis that would be time-consuming and resource-intensive.

**VII. Response to Request for Comment 5: TAF Coalition suggests the following modifications to 31 C.F.R. § 1010.930(c)(5)(i)(B).**

TAF Coalition believes the limitations in 31 C.F.R. § 1010.930(c)(5)(i)(B) are too broad. As described above in the discussion on 31 C.F.R. § 1010.930(c)(5)(iv)(A)(3), *see supra* Section VI, whistleblowers are often targeted by companies for taking documents, recording information, or otherwise working to get the Government the necessary information. If a whistleblower is criminally prosecuted by a local District Attorney for making a recording in a two-party consent state, does that count as a criminal conviction “related to” the covered action? Without further clarity, it is easy to see how this rule could be misapplied beyond what may be intended by FinCEN.

The rule, as written, also includes misdemeanors as well as felonies, without any limitation on the degree of wrongdoing or the type. TAF Coalition suggests this is overbroad and counterproductive. Whistleblower programs have historically recognized that the best information may come from whistleblowers who have some degree of culpability. In the False Claims Act context, for example, the original legislation sponsor, Senator Jacob Howard, stated that the purpose of the law was “setting a rogue to catch a rogue.”<sup>21</sup> We know FinCEN stands to benefit from having the best-placed, insider whistleblowers it can. If whistleblowers are

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<sup>21</sup> 33 Cong. Globe 952-960, 955-956 (1863) (remarks of Sen. Howard).



concerned that any arguable level of culpability will limit their potential reward, they are far less likely to come forward.

**VIII. Response to Request for Comment 6: TAF Coalition agrees with the ninety (90) day time limit as appropriate and in line with similar programs.**

TAF Coalition agrees that 90 days is an appropriate period of time to allow whistleblowers to find NOCA information, draft their award submissions, and get any needed information to the agency, assuming NOCAs are published in easily accessible, searchable, and online public databases.

**IX. Response to Request for Comment 7: TAF Coalition suggests modifications to the requirement that whistleblowers are responsible for determining the successful enforcement of an action.**

TAF Coalition believes it is inappropriate to put the entire burden on whistleblowers to determine whether and when a related action has been resolved. Whistleblowers, particularly those without counsel, are not likely to be able to track what can be multiple criminal and civil proceedings, including some that may have non-standard resolutions. TAF Coalition suggests that FinCEN should, as a matter of course, ensure that whistleblowers know every other agency with whom the whistleblower's information has been shared, and, to the best of FinCEN's ability, contact information for the lead investigator or attorney at these other agencies. That will not only allow whistleblowers to best contribute their knowledge and skills to all threads of an investigation, it will also allow whistleblowers to best track the status of their matter.

**X. Response to Request for Comment 8: TAF Coalition suggests the following modifications to 31 C.F.R. § 1010.930(e)(3)(iii).**

TAF Coalition generally agrees with the factors listed in 31 C.F.R. § 1010.930(e)(3)(iii) determining the appropriate amount of a whistleblower award. We suggest a few modifications for clarity.



TAF Coalition suggests that the penalty for “unreasonable delay” laid out in 31 C.F.R. § 1010.930(e)(3)(iii) would benefit from two limitations. First, as recognized by other federal agencies, it is fair to treat whistleblowers who are represented by counsel differently from those who are not.<sup>22</sup> Those represented by counsel are generally more aware of the rules and protocols for reporting information. Penalizing individuals who lack the information necessary to know how to report their information is unfair and counterproductive to FinCEN’s goals of receiving the highest quality information possible. TAF Coalition notes that this seems particularly important in the sanctions context, where it is likely many potential whistleblowers will be coming from abroad and may be even less familiar with the rules. Even in the domestic context and for high-information whistleblowers, whistleblowers often delay because they believe their company will do the right thing and self-report. Thus, there is inherently a conflict between penalizing whistleblowers for a delay that may, in retrospect, seem unreasonable while also penalizing whistleblowers who do not report internally under 31 C.F.R. § 1010.930(e)(3)(iii)(F). In all cases, the most valuable whistleblowers are usually those who take time to collect their information and put together a detailed, useful submission to the relevant agency. That may involve consultation with counsel as well, who can help refine the submission to address key legal or policy points for the receiving agency. Those efforts may be time-consuming on the front end, but they can, in the long run, save the receiving agency time, resources, and effort. TAF Coalition suggests this issue could be addressed by limiting the standard of “unreasonable” delay to be “highly unreasonable.”

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<sup>22</sup> For example, the SEC considers whistleblowers to have constructive notice that you must file a Form TCR within 30 days of providing information to the SEC if you are represented by counsel. *See* <https://www.sec.gov/enforcement-litigation/whistleblower-program/whistleblower-frequently-asked-questions>. This is consistent with other provisions of the SEC (and CFTC) regulations that differentiate between represented and non-represented whistleblowers. *See e.g.*, 17 C.F.R. § 240.21F-7(b) (SEC regulations requiring anonymous whistleblowers to be represented by counsel); 17 C.F.R. § 165.7(c)(2) (CFTC regulations requiring anonymous whistleblowers to be represented by counsel).



Even beyond the potential paradox created by penalizing delay while valuing internal reporting, TAF Coalition suggests valuing a whistleblower's internal reporting in determining awards, as contemplated by 31 C.F.R. § 1010.930(e)(3)(iii)(F), risks unfairly penalizing whistleblowers who are reporting on companies with non-functional or broken compliance systems. It also devalues outsider whistleblowers, who often bring meaningful information and analysis but do not have the opportunity to report through these mechanisms.

TAF Coalition also suggests that FinCEN may want to reconsider relying on the judgment of other agencies or authorities, including self-regulatory organizations, to determine the appropriate level of award as contemplated by 31 C.F.R. § 1010.930(e)(3)(iii)(G). Different parts of the government, even those with whistleblower programs, have different rules and standards, different historical treatment of whistleblowers, and different processes for addressing informants. FinCEN should not feel bound by these other agencies. Instead, FinCEN's model should be leading the way in balancing the necessary interests in any whistleblower reward program and should not be hindered by older, less robust standards.

Although TAF Coalition generally agrees with the purpose of 31 C.F.R. § 1010.930(e)(3)(iii)(C) in rewarding whistleblowers who provide important information in line with Treasury's policy priorities, TAF Coalition suggests this section could benefit from increased clarity regarding the sources of information to determine programmatic priorities.

**XI. Response to Request for Comment 9: TAF Coalition agrees that the proposed \$15 million threshold for a presumptive 30% award in 31 C.F.R. § 1010.930(e)(3)(iv) is appropriate.**

FinCEN requests comments on the presumption that a whistleblower whose information results in an enforcement action of \$15 million or less will receive the maximum 30% award. TAF Coalition agrees that this presumption provides significant efficiency for FinCEN. As shown by the SEC's example, agencies that use a presumption for lower-value settlements can



save significant resources and thus can devote themselves to more complicated award questions that often arise in higher-dollar-value matters. Because FinCEN has far fewer small settlements than the SEC, it makes sense to put the threshold at \$15 million, an appropriate line between FinCEN’s larger and smaller cases.

TAF Coalition, however, does note concerns with the agency retaining discretion to override this presumption if it determines the whistleblower “undermined the relevant company’s internal compliance or reporting functions.” As discussed above, a company’s internal compliance program rarely exists in an ideal world. To the extent a whistleblower, for example, withdrew an internal complaint after receiving threats from colleagues or less-than-candid responses from the compliance or legal team, that whistleblower should not be penalized for taking the reasonable step of going outside the company’s functions to the regulators capable of stopping the fraud. At a minimum, if FinCEN wishes to retain some of this provision, it needs careful clarification to ensure it is appropriately limited in scope.

**XII. Response to Request for Comment 10: TAF Coalition has no suggested modifications to 31 C.F.R. § 1010.930(c)(5)(iv)(A)(1).**

TAF Coalition agrees with the suggested language in 31 C.F.R. § 1010.930(c)(5)(iv)(A)(1) and has no suggested modifications in response to Request for Comment 10.

**XIII. Response to Request for Comment 11: TAF Coalition supports the organization of the regulations.**

FinCEN has requested comments on whether the organization of the regulations is appropriate and understandable. TAF Coalition agrees that the organization is easy to follow and clear. Aside from the minor suggestions herein regarding wording, TAF Coalition does not suggest reorganizing the regulations.



**XIV. Response to Request for Comment 12: TAF Coalition supports the separation of eligibility requirements from standards related to the whistleblower award amount.**

FinCEN has requested comments on whether it is reasonable to separate the discussion of eligible whistleblowers from the criteria for determining the amount of the award. TAF Coalition supports this separation. As whistleblower attorneys, we are generally responsible for drafting two sets of documents: first, our client’s information to the agency, and second, if the information results in an enforcement action, an award submission demonstrating why our client deserves an award. Before drafting the first set of documents, we need to determine our client’s eligibility. Before drafting the second, we need to determine how our client’s information fits within the award criteria. There are separate inquiries that occur at different times in a matter—times that are often separated by years. Thus, it helps us as whistleblower counsel focus our attention on the important standards for each set of documents by separating out these criteria.

**XV. Additional Comment 1: TAF Coalition makes the following linguistic suggestions to eliminate potential vagueness or confusion.**

In addition to the suggestions made above in response to the Request for Comments, TAF Coalition has the following suggestions for language that should be further clarified to avoid any confusion or misinterpretation.

- For 31 C.F.R. § 1010.930(b)(1)(i): TAF Coalition appreciates FinCEN retaining the flexibility to authorize a whistleblower submission “in another manner authorized by FinCEN.” However, TAF Coalition suggests greater clarity would be helpful regarding how such authorizations will be announced, *i.e.*, whether this will be on a case-by-case basis or only as a general rule.
- For 31 C.F.R. § 1010.930(c)(4)(ii)(A): This section provides the definition of when original information will be considered to have “led to” the enforcement of an action. TAF Coalition suggests adding an explicit presumption that if a whistleblower’s



information causes the agency to open an investigation, it satisfies the “led to” requirement. That is the most reasonable, plain-meaning interpretation of “led to” and, like the \$15 million presumption in 31 C.F.R. § 1010.930(e)(3)(iv), will make the Whistleblower Program more efficient and easily administrable. To be clear, TAF Coalition does not suggest this is the only circumstance that meets the “led to” standard, simply the cleanest.

- For 31 C.F.R. § 1010.930(c)(5)(ii): TAF Coalition suggests that the term “foreign officials” needs clarity. In many countries, there is a blurred line between foreign officials and officers of foreign state-owned or state-affiliated companies. TAF Coalition suggests that this should be clarified to be limited to those officials whose prosecution would be prohibited by sovereign immunity. Alternatively, TAF Coalition suggests an explicit carve-out for foreign officials whose official status is limited to their role in a state-owned company.<sup>23</sup>
- For 31 C.F.R. § 1010.930(c)(5)(iii)(A): In addition to the comments above on this provision, TAF Coalition suggests that requiring any whistleblower who is an “officer, director, trustee, or partner of an entity” wait 120 days before filing a whistleblower submission is overinclusive. For many smaller entities such as start-ups, for example, nearly everyone has the title of officer or director. Similarly, in many large financial institutions, “Vice President” is a title given to relatively junior employees and does not connote any managerial responsibility, as might be expected for an officer.<sup>24</sup> Instead,

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<sup>23</sup> As noted above, TAF Coalition supports the parallel comments made by NWC. *See* Letter from Stephen M. Kohn, Chairman of the Bd. of Dirs., Nat’l Whistleblower Ctr., to Andrea Gacki, Dir., FinCen (Apr. 30, 2026), <https://www.whistleblowers.org/wp-content/uploads/2026/05/FinCEN-Comments-from-NWC-April-30-2026.pdf>.

<sup>24</sup> This issue has been the subject of significant litigation in the D&O insurance coverage context. *See generally*, William D. Johnston, et al., *Are Vice Presidents “Officers” Entitled to Advancement and Indemnification*, YOUNG, CONAWAY, STARGATT & TAYLOR, LLP (May 2018), available at



TAF Coalition suggests limiting this in a similar manner to the SEC’s limitation, *see* 17 C.F.R. § 240.21F-4(b)(4)(iii)(A), whereby such officers are only forced to wait 120 days if they learn of the information from another person reporting misconduct to them, not in the course of their general job duties.

- For 31 C.F.R. § 1010.930(c)(5)(iii)(B): In addition to the comments above, TAF Coalition suggests limiting this restriction solely to those individuals who learn of the misconduct as a result of their job duties in audit or compliance. In global companies, it is very likely that individuals who serve in an audit function may learn of misconduct from other sources. There is no reason to penalize these individuals for information that does not result from their audit function.
- For 31 C.F.R. § 1010.930(c)(6): This provision provides the rules by which a whistleblower or whistleblower counsel may be permanently barred from the program. TAF Coalition supports the inclusion of such rules. Meritorious whistleblowers will suffer if the Whistleblower Program is overwhelmed by frivolous submissions, a particularly acute danger given the ability of large-language models (“LLMs”) and other artificial-intelligence (“AI”) tools to quickly generate voluminous submissions of dubious utility.<sup>25</sup> To ensure that meritorious and other good-faith whistleblowers are not excluded, however, TAF Coalition suggests two revisions to the Proposed Rules. First, FinCEN should follow the SEC’s example and provide whistleblowers and/or counsel the opportunity to withdraw their submission after being notified that FinCEN intends to bar

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[https://www.youngconaway.com/content/uploads/2018/06/Advancement\\_Are-Vice-Presidents-Officers\\_Client-Alert-Final.pdf](https://www.youngconaway.com/content/uploads/2018/06/Advancement_Are-Vice-Presidents-Officers_Client-Alert-Final.pdf).

<sup>25</sup> Cf. Jason Nelson, *AI Slop Floods Bug Bounty Programs as Companies Struggle with Fake Reports*, decrypt.co (May 19, 2026) (noting that “Cybersecurity firms and open-source software projects are dealing with a surge of AI-generated bug reports, many of which are false or misleading”), available at <https://decrypt.co/368309/ai-slop-floods-bug-bounty-programs-fake-reports>.

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the individual and/or counsel.<sup>26</sup> Second, FinCEN should remove 31 C.F.R.

§ 1010.930(c)(6)(i)(C)(3), which would permit FinCEN to bar whistleblowers for the omission of facts. As discussed in Section XVII, below, establishing a willful omission is difficult, and the subjectivity of the standard creates the potential for abuse.

- For 31 C.F.R. § 1010.930(d)(1): TAF Coalition suggests there is no reason for a longer wait period after a related action than after a Treasury action and suggests shortening the award application period to 90 days for both. If the concern is that whistleblowers will not be aware of the settlement of a related action right away, TAF Coalition suggests FinCEN can resolve this concern by requiring staff to notify every individual with whom they have been in contact that such a settlement occurred, without any bearing on that whistleblower’s ultimate eligibility or award.
- For 31 C.F.R. § 1010.930(e)(2): TAF Coalition asks FinCEN to provide further clarity regarding the nature of this confidentiality agreement. For example, many whistleblowers wish to publish their award recipient status to deter other bad actors and to encourage other whistleblowers to step forward. Less positively, many whistleblowers find themselves “blacklisted” by their chosen industry after their whistleblowing and may require some alternate means of income, including speaking about their whistleblower experience or writing a book about it. FinCEN should be explicit in not prohibiting those whistleblowers who choose to talk about their award from doing so.
- For 31 C.F.R. § 1010.930(e)(3)(i)(B): TAF Coalition suggests this provision should be narrowed. For example, if an individual “controlled” an entity but did not control the bad conduct, will they be barred from recovering? As in our comments regarding Request for Comment 5 (regarding 31 C.F.R. § 1010.930(c)(5)(i)(B)), TAF Coalition urges FinCEN

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<sup>26</sup> 17 C.F.R § 240.21F-8(e)(3).



to not overly limit whistleblowers who may have some role in the bad acts in question.

Those individuals should instead be incentivized to come clean, report to the government, and share their high-quality insider information with the government.

- For 31 C.F.R. § 1010.930(e)(3)(v)(D): This provision provides that FinCEN may pay an award less than 10% if it determines another agency has paid or will pay the whistleblower based on the same covered conduct and that the other award is “reasonable.” Such a rule runs counter to the statutory mandate that FinCEN “shall pay” awards between 10 and 30% on covered actions and related actions.<sup>27</sup> The statute does not permit FinCEN to deviate from this range, and thus this provision is unlikely to stand under *Loper Bright*. To the extent that FinCEN is concerned about “double payment” for a single action, FinCEN could adopt a procedure to determine the percentage award it would have granted to the whistleblower in the absence of another agency’s actions. Then, under the circumstances otherwise described by the regulations, FinCEN may subtract the other agency’s award from what it would have given the whistleblower to determine the appropriate award amount. Such a system would ensure that the whistleblower obtains an award within the required 10-30% range.
- For 31 C.F.R. § 1010.930(e)(4)(iii): TAF Coalition suggests modifying this section to provide for the publication of any award determination as issued, not on a periodic basis.
- For 31 C.F.R. § 1010.930(e)(5): TAF Coalition recommends an explicit policy governing the payment of funds when there are insufficient amounts available in the Financial Integrity Fund. For example, FinCEN could adopt a “first in, first out” policy, with modifications to better ensure the program’s longevity. Regardless of the policy adopted by the agency to manage these sometimes-limited funds, TAF Coalition and

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<sup>27</sup> 31 U.S.C. § 5323(b)(1).



whistleblowers generally would appreciate as much clarity as the agency can provide about their objective criteria for determining the distribution of funds when there is an insufficient amount in the Fund.

- For 31 C.F.R. § 1010.930(f)(2)(ii): TAF Coalition raises very serious concerns regarding this section’s language. As drafted, it would allow DOJ and Treasury to share a whistleblower’s information with witnesses and defendants without any meaningful limitation or commitment to protect the whistleblower’s confidentiality and anonymity. Such a provision completely undermines whistleblower secrecy and would destroy confidence in the program before it even gets off the ground. Whistleblowers take great risks to provide information to the government, and, even when they do so anonymously, the information they provide can often easily be traced to them. Particularly given the nature of the matters covered by the Statutes, revealing whistleblower information to witnesses and defendants may put the whistleblower, and potentially their family, at significant risk. Absent some assurance that the government will protect their identity to the maximum extent possible, rational potential whistleblowers will assess the risk to them professionally and personally as simply too high to come forward. Given the longstanding history of serious retaliation against whistleblowers—recognized throughout the proposed regulations (including in the very next section, 31 C.F.R. § 1010.930(f)(3)) and in FinCEN’s many statements on the program—this fear is not unjustified. A rule that allows the government to use a whistleblower’s information merely to “progress an investigation”<sup>28</sup> is no protection whatsoever. While TAF Coalition recognizes that criminal prosecutors have a significant number of disclosure obligations to defendants, those disclosure obligations normally do not exist until a case is charged,

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<sup>28</sup> Whistleblower Incentives & Protections, 91 Fed. Reg. 16328, 16341 (Apr. 1, 2026).



or sometimes not at all if a defendant settles the matter. TAF Coalition strongly urges FinCEN to adopt the straightforward and easily administrable standard in the SEC's whistleblower rules, to limit disclosure of a whistleblower's information to defendants only if legally required. *See* 17 C.F.R. § 240.21F-7(a)(1). Should FinCEN choose to adopt a weaker standard, TAF Coalition members have grave concerns about the viability of the Whistleblower Program.

- For 31 C.F.R. § 1010.930(f)(5): TAF Coalition suggests that the non-waiver provision should also include a prohibition on any language that purports to limit a whistleblower's right to collect an award or the requirement that a whistleblower notify a company before reporting any concerns to the government. Those are both common tactics companies use to deter whistleblowers and FinCEN should make explicit that neither will be tolerated.
- For 31 C.F.R. § 1010.930(g)(3): This provision provides for the withholding of a significant amount of information from the administrative record if an appeal occurs. TAF Coalition suggests adding a notice provision that would require the agency to alert whistleblowers that documents are being withheld and some basic description of those documents, similar to a privilege log.

**XVI. Additional Comment 2: TAF Coalition suggests moving the following sections.**

In addition to the suggested language changes or additions described above, TAF Coalition has the following suggestions for provisions that should be moved to different parts of the regulations and/or reconciled.

- For 31 C.F.R. § 1010.930(c)(1)(iv): This provision provides that a whistleblower is only eligible if they provide certain enumerated forms of assistance to the government. TAF Coalition suggests that this assessment is more relevant to the criteria for award determinations than to whistleblower eligibility. As is described below in Section XVII,



there are many legitimate reasons a whistleblower may not be able to respond fully to government requests for information. That should not make them an ineligible whistleblower, particularly if they are not in a position to offer the “explanations” or testimony that the rule contemplates for reasons of physical or professional risk.

However, the degree to which a whistleblower’s assistance and cooperation helped the government accomplish its enforcement mandate can be appropriate to consider in determining an appropriate award level within the 10–30% range.

- For 31 C.F.R. § 1010.930(e)(2) and 31 C.F.R. § 1010.930(e)(7): TAF Coalition raises the concern that these two provisions potentially conflict and should be reconciled. In 31 C.F.R. § 1010.930(e)(2), FinCEN correctly recognizes the sometimes-serious burden placed on whistleblowers forced to wait for extended periods of time for their award and provides for potential advance payment. 31 C.F.R. § 1010.930(e)(7), however, provides that an award should not be paid until the “later” of either the completion of an appeals process or the date on which the monetary sanction is collected. To further complicate the timing question, a monetary sanction is usually paid on the date that an enforcement action’s settlement is announced—or well before the award determination process has begun. TAF Coalition suggests that these award timing questions should be resolved and may require some degree of reorganization of the regulations to address.

**XVII. Additional Comment 3: TAF Coalition urges FinCEN to reconsider the requirement that information be “complete” or fail to omit information.**

Throughout the proposed regulations and in the proposed TCR, FinCEN repeatedly requires whistleblowers to submit complete information or to not omit information. Although obviously well-intentioned, TAF Coalition notes that these proposed requirements fail to account for the many valid reasons that whistleblowers will not include full information.



TAF Coalition members know from their long experience representing whistleblowers that often, the initial information submitted is not “complete.” This may be because a whistleblower is in a hurry to make an initial submission to alert FinCEN to ongoing fraud. Whistleblowers may also simply be confused about what is relevant information and need the agency’s guidance in determining that question. Documents may be marked “confidential” and whistleblowers may be concerned about the implications for their own liability if they share those documents without explicit agency approval. Some companies simply fail in their duties to inform employees that they have a right to go regulators with information and documents, and employees are thus justly nervous about it. Whistleblowers, unfortunately, reasonably fear retaliation, discipline, or termination if they provide documents against company policy, even when assured that they are protected when providing documents to the government. More sophisticated whistleblowers may be nervous about privilege and may be worried about unintentionally tainting a DOJ or FinCEN team by providing arguably privileged materials. Others may be aware that many documents are marked in ways that can allow a company to trace who provided it. The list of valid reasons why a whistleblower may not provide “complete” information goes on. Penalizing whistleblowers and/or counsel for valid omissions is contrary to the spirit of the program.

Moreover, it ignores the reality of a functional private-public partnership represented by the whistleblower programs: Whistleblowers and their counsel remain in close contact with the investigating agencies and are there to support the investigation along the way. Once the regulators are aware of the underlying issue, they can (and regularly do) ask the whistleblower or counsel for more information. In many cases, the regulator will submit their own document requests to the company after reviewing the whistleblower’s TCR or interviewing the



whistleblower. The process working as intended does not mean the whistleblower did not provide complete information.

Taking these concerns into account requires changes to the proposed Form TCR. In Section F (Whistleblower’s Declaration), the proposed version requires a whistleblower to certify that the information is “true, correct, and complete.”<sup>29</sup> TAF Coalition suggests modifying this certification. Instead of “true, correct, and complete,” TAF Coalition suggests “true, correct, and does not omit any information that would make the statements herein misleading.” The same language is found in Section H of the proposed Application for Award for Original Information Submitted Pursuant to 31 U.S.C. 5323, and TAF Coalition makes the same suggestion for that certification.

It would also require some linguistic changes in the proposed regulations. First, TAF Coalition suggests that 31 C.F.R. § 1010.930(c)(4)(iv)(B)(3) should be modified to clarify that only those omissions done for nefarious reasons qualify to render a whistleblower ineligible. Second, 31 C.F.R. § 1010.930(c)(6)(i)(C)(3) should be modified to clarify that only those omissions done for nefarious reasons qualify in the consideration of barring either whistleblowers or attorneys. To the extent any other provision of the regulations includes similar language, they should be altered accordingly.

**XVIII. Additional Comment 4: TAF Coalition urges FinCEN to provide guidance now regarding the “voluntariness” of original information.**

31 C.F.R. § 1010.930(c)(2) provides the rules for when information will be considered sufficiently voluntary to be considered “original” under the regulations. However, FinCEN does not provide any guidance on how voluntariness will be determined. Instead, it states that separate guidance will be provided at a later date regarding the determination of voluntariness for a

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<sup>29</sup> 91 Fed. Reg. 16328, 16331.



statement. TAF Coalition strongly urges FinCEN to provide such guidance as part of this regulatory process in the interests of clarity. Too many words are subject to misinterpretation in the current regulations as drafted, which creates too much risk of regulatory uncertainty.

For example, under the proposed regulations, a submission is no longer considered “voluntary” if the whistleblower has received any prior request, inquiry, or demand about a “related or relevant” matter, whether or not the response was compelled by subpoena or applicable law. “[R]elated or relevant” could be either an exceedingly broad standard or one that is narrowly tailored, depending on how the agency interprets it. As an illustrative example, if a whistleblower reports a bank for failing to file SARs, and the bank has previously received a Matter Requiring Attention (“MRA”) related to its failure to file Currency Transaction Reports (“CTRs”), is that a related or relevant inquiry? Both concern the failure to file required documents under the BSA. Both required filings aim to determine whether suspicious money-laundering activity is occurring. However, these two required filings are not necessarily relevant to each other nor even filed by the same team at a bank. Without further guidance, a whistleblower has no way of knowing if that is a “related or relevant” request.

TAF Coalition strongly urges FinCEN to provide guidance regarding the meaning of voluntariness. TAF Coalition further urges FinCEN to define the limitations narrowly, to avoid the confusion illustrated by the above example. TAF Coalition suggests that the SEC provides a good model here. Although the language is superficially similar, key differences make it clearer and more narrowly tailored. The SEC provides that a submission is voluntary “if you provide your submission before a request, inquiry, or demand that relates to the subject matter of your submission is directed to you or anyone representing you.” 17 C.F.R. § 240.21F-4(a)(1). Unlike the proposed regulation, this version provides for the narrower “relates to” rather than “relevant”



connection between the inquiry and the submission. It also does not include the possibility that a request to a whistleblower’s employer be considered in the voluntariness inquiry.

**XIX. Additional Comment 5: TAF Coalition urges FinCEN to reconsider allowing whistleblowers to file anonymously without attorney representation.**

Under 31 C.F.R. § 1010.930(b)(1)(ii), anonymous whistleblowers can file either with or without an attorney’s representation (“A whistleblower may submit original information anonymously through an attorney”). The Proposed Form TCR and the comments regarding the Proposal repeatedly reference individuals filing anonymously without attorneys. Although TAF Coalition commends this whistleblower-forward approach, it does raise some concerns. Under the SEC program, for example, whistleblowers can file anonymously only with an attorney’s representation.<sup>30</sup> This means that an attorney, with attendant ethical duties and obligations to the agency and the courts, swears that they have verified the whistleblower’s identity before submitting the information. This provides the agency a strong degree of comfort that the whistleblower is a valid person with legitimate information. If a whistleblower files anonymously without an attorney, FinCEN loses that secondary check on the validity of the information. With the wide availability of the same LLM and AI tools discussed above, this need for a secondary check becomes all the more important. Unfortunately, the requirement that an anonymous whistleblower be represented by an attorney at the award stage, *see* 31 C.F.R. § 1010.930(d)(3)(ii), is insufficient to protect against the potential drain on agency resources from fielding LLM-generated anonymous reports.

TAF Coalition suggests that the integrity of the program would be improved by maintaining the requirement that an anonymous whistleblower be represented by an attorney at all stages of the process.

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<sup>30</sup> 17 C.F.R. § 240.21F-7(b).



**XX. Conclusion**

TAF Coalition thanks FinCEN for the opportunity to provide comments on the Proposed Rules. The promulgation of the Proposal and the establishment of the Whistleblower Program represent a signal moment for whistleblowers, their counsel, and the government's efforts to prevent, detect, and address violations of the Statutes. TAF Coalition members look forward to partnering with FinCEN to ensure the Whistleblower Program is highly effective and fulfills Congress' mandate to protect and reward whistleblowers who take great risks to bring misconduct to light.

If you have any questions, please do not hesitate to contact Jacklyn DeMar, President and CEO of TAF Coalition, at [jdemar@taf.org](mailto:jdemar@taf.org) or (202) 296-6393. TAF Coalition would be happy to provide FinCEN with any additional information that might be useful in determining the content of the final rule.

Sincerely,

Jacklyn DeMar  
President & CEO, The Anti-Fraud Coalition