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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506-AB57

Whistleblower Incentives and Protections

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN is proposing a rule to establish a whistleblower program that offers 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) to voluntarily report such information (the "Whistleblower Program"). The proposed rule would implement section 6314 of 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, respectively. The Whistleblower Program will contribute to the U.S. government's efforts to safeguard the financial system from illicit use, promote national security, and combat money laundering, terrorist financing, proliferation financing, and related crimes. This notice of proposed rulemaking invites comments from the public regarding all aspects of the proposed rule, as well as comments in response to specific questions.

DATES: Written comments on this proposed rule must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Comments must be submitted by any of the following methods:

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2026–0067 and RIN 1506–AB57.
- Mail: Financial Crimes Enforcement Network, P. O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2026–0067 and RIN 1506–AB57.

FOR FURTHER INFORMATION CONTACT: FinCEN's Regulatory Support Section by submitting an inquiry at www.fincen.gov/contact.

SUPPLEMENTARY INFORMATION:

I. Scope

In this notice of proposed rulemaking, FinCEN is proposing and seeking comment on regulations that would implement the statutory framework set forth in section 5323 of title 31 of the United States Code, 31 U.S.C. 5323, for a whistleblower program—the "Whistleblower Program." The proposed rule sets out the procedures a whistleblower must follow to be eligible for payment of an award by FinCEN and the protections afforded to whistleblowers who provide information. Specifically, the proposed rule would:

- Define key terms;
- Set forth procedures for whistleblowers to submit information about potential violations;
- Describe the requirements a whistleblower must meet to be eligible for an award;
- Set forth procedures for whistleblowers to submit an award application;
- Describe the process FinCEN will use to adjudicate award applications; and
- Describe certain protections afforded to whistleblowers.

As required by 31 U.S.C. 5323(i), FinCEN has consulted with the Department of Justice (DOJ) on this proposed rule.

II. Background

A. The AML Act and the AML Whistleblower Improvement Act

On January 1, 2021, Congress enacted the FY21 NDAA, which included the AML Act as a component.[1] Along with other updates to the BSA that aimed to strengthen the U.S. anti-money laundering/countering the financing of terrorism (AML/CFT) framework, section 6314 of the AML Act amended section 5323 of title 31 in the U.S.C. ("section 5323", or "31 U.S.C. 5323") to provide for enhanced whistleblower award provisions and otherwise set out a framework for a whistleblower program to be implemented by the Secretary of the Treasury (Secretary).[2]

The enhanced award provisions of the AML Act provide for the ability to make an award to one or more eligible whistleblowers who voluntarily provided original information to the employer of the whistleblower(s), including as part of the job duties of the whistleblower(s), the Department of the Treasury (Treasury), or DOJ, that led to the successful enforcement of a covered action or related action.[3] Under the AML Act, covered actions only pertain to violations of the BSA and are defined as judicial or administrative actions brought by Treasury or DOJ that result in monetary sanctions exceeding $1,000,000.[4] With regard to the amount of an award, the AML Act authorizes payment to the whistleblower of up to 30 percent of monetary sanctions

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[1] The Anti-Money Laundering Act of 2020 (AML Act) is Division F, §§ 6001-6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (the FY21 NDAA), Public Law 116–283 (Jan. 1, 2021).

[2] The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Foreign Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56 (Oct. 26, 2001), and other legislation, including the AML Act. The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1960, 31 U.S.C. 5311–5314 and 5316–5336, and includes notes thereto, with implementing regulations at 31 CFR Chapter X. The AML Act, section 6003(1) (Definitions), defines the BSA as section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), chapter 2 of title I of Pub. L. 91-508 (12 U.S.C. 1951 *et seq*.), and 31 U.S.C. chapter 53, subchapter II. Division F of the FY21 NDAA, section 6314 of the AML Act, among other things, amends section 5323 of subchapter II of chapter 53 of title 31, United States Code (U.S.C.), and retitles it "Whistleblower incentives and protections." For purposes of defining a covered statute under the Whistleblower Program, the term BSA means subchapter II of chapter 53 of title 31, United States Code.

[3] 31 U.S.C. 5323(a)(5), (b). While section 5323 generally refers to the "Secretary of the Treasury" or the "Secretary," the proposed rule generally refers to the "Department of the Treasury." However, when the proposed rule refers to the Secretary in the role of the Whistleblower Program's administrator, the proposed rule refers to "FinCEN," which is the Treasury bureau to which the Secretary delegated responsibility for implementing and overseeing the BSA, which would include the Whistleblower Program. Moreover, whereas section 5323 generally refers to the "Attorney General," the proposed rule refers to the "Department of Justice." The purpose of using these references is to make the proposed rule easier for the public to read and understand.

[4] 31 U.S.C. 5323(a)(1).

collected in certain circumstances. The payment of awards is also subject to amounts made available by appropriation.[5]

The AML Act also repealed 31 U.S.C. 5328, which contained certain protections for whistleblowers who were employees or former employees of financial institutions or nonfinancial trades or businesses. The AML Act replaced these provisions and consolidated all BSA whistleblower-related provisions into the new section 5323. Specifically, the amended section 5323 prohibits employers (subject to certain exclusions for banks and credit unions) from directly or indirectly retaliating against a whistleblower who provides information, testifies, or cooperates with the government in accordance with section 5323 in the terms and conditions of their employment or post-employment.[6] In addition to these anti-retaliation protections, the AML Act also amended section 5323 by adding a confidentiality provision, which addresses the use and sharing of certain whistleblower information by Treasury, DOJ, and other government entities.[7]

The AML Whistleblower Improvement Act, passed by Congress in December 2022, further amended section 5323 to expand the scope of the whistleblower program by allowing awards to be paid to one or more eligible whistleblowers who voluntarily provide original information relating to certain violations of IEEPA, TWEA, and the Kingpin Act, and for conspiracies to violate those statutes and the BSA.[8] This substantially expanded the scope of covered actions beyond violations of the BSA to include violations of U.S. trade and economic sanctions, among other violations of IEEPA. The AML Whistleblower Improvement Act mandated that eligible whistleblowers receive a minimum of 10 percent of monetary sanctions collected in covered actions or related actions, to ensure whistleblowers are appropriately

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[5] 31 U.S.C. 5323(b).
[6] 31 U.S.C. 5323(g)(1). The whistleblower protections in section 5323(g)(1) do not apply with respect to any employer that is subject to 12 U.S.C. 1831j or 12 U.S.C. 1790b, 1790c, which separately provide protections against retaliation for reporting possible violations of the law. *See* 31 U.S.C. 5323(g)(6).
[7] 31 U.S.C. 5323(g)(4).
[8] The Anti-Money Laundering Whistleblower Improvement Act (AML Whistleblower Improvement Act) is Title IV of Division AA of the Consolidated Appropriations Act, 2023, Public Law 117-328 (Dec. 29, 2022); 31 U.S.C. 5223(a)(1).

compensated given the strong public interest in receiving the information and the lack of expense to taxpayers. To ensure whistleblowers timely receive awards, the AML Whistleblower Improvement Act also created a revolving fund that receives deposits through collected penalties from certain enforcement actions from which awards can be paid without the need for further appropriations.

B. Overview of Covered Statutes

Under the statutory framework of the Whistleblower Program, the receipt of a monetary award by a whistleblower is predicated on the successful enforcement of a "covered action," which is an administrative or judicial action taken by Treasury or DOJ under certain "covered statutes."[9] Pursuant to section 5323, the "covered statutes" are the BSA, IEEPA, TWEA, and the Kingpin Act.[10]

The purpose of the BSA is to combat money laundering, financing of terrorism, and other illicit finance activity, including by individuals associated with drug cartels and transnational organized criminal groups.[11] Congress has authorized the Secretary to administer the BSA and to require certain records and reports that "are highly useful in criminal, tax, or regulatory investigations, risk assessments, or proceedings," or in "intelligence or counterintelligence activities, including analysis, to protect against terrorism."[12] In turn, the Secretary has delegated the authority to implement, administer, and enforce compliance with the BSA and its associated regulations to the Director of FinCEN (Director).[13] The Secretary has also authorized the Director to redelegate any authority vested in the Director to an officer or employee of an agency

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[9] 31 U.S.C. 5323(a).
[10] *Id*. Specifically, the covered statutes are subchapter II of chapter 53 of title 31, United States Code, chapter 35 or section 4305 or 4312 of title 50, United States Code, and the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901 *et seq*.)).
[11] 31 U.S.C. 5311.
[12] 31 U.S.C. 5311(1). Section 358 of the USA PATRIOT Act added language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism. Section 6101 of the AML Act added language further expanding the scope of the BSA but did not amend these longstanding purposes.
[13] Treasury Order 180–01 (Jan. 14, 2020), https://home.treasury.gov/about/general-information/orders-and-directives/treasury-order-180-01.

other than Treasury, when authorized by law.[14] The authority to examine certain designated types of financial institutions for compliance with the BSA has been delegated to appropriate federal functional regulators.[15]

Consistent with its enforcement authority, FinCEN may impose civil money penalties on financial institutions, nonfinancial trades or businesses, and other persons that violate the BSA.[16] Generally, the authority to impose such penalties has not been redelegated.[17] However, certain enforcement authorities have been redelegated to the Internal Revenue Service (IRS), including the authority to enforce BSA provisions regarding records and reports of foreign bank and financial accounts and to investigate criminal violations of certain reporting requirements.[18]

In addition to the BSA, the other covered statutes are IEEPA, TWEA, and the Kingpin Act. IEEPA authorizes the President of the United States to take certain actions following a declaration of national emergency. These actions include, but are not limited to, the regulation of transactions subject to U.S. jurisdiction involving property in which any foreign country or foreign national has an interest to deal with any unusual or extraordinary threat to the national security, foreign policy, or economy of the United States. Likewise, provisions of TWEA authorize certain measures during times of war and national emergency, including but not limited to the regulation of transactions subject to U.S. jurisdiction involving any property in which a foreign country or foreign national has an interest, as well as seizure and holding of foreign-owned property in trust. The Kingpin Act authorizes economic and other financial sanctions on significant narcotics traffickers and their networks.

Collectively, these statutes (IEEPA, TWEA, and the Kingpin Act) are enforced by Treasury and DOJ. For example, Treasury's Office of Foreign Assets Control (OFAC) enforces economic sanctions programs based on IEEPA, TWEA, and the Kingpin Act. Another

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[14] *Id.*
[15] 31 CFR 1010.810(b).
[16] 31 U.S.C. 5321.
[17] 31 CFR 1010.810(d).
[18] 31 CFR 1010.810(c)(2), 1010.810(g).

component of Treasury, the Office of Investment Security (OIS), currently administers the IEEPA-based rules implementing Executive Order (EO) 14105, "Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern" (Treasury's Outbound Investment Security Program).[19] Furthermore, DOJ administers the IEEPA-based rules implementing EO 14117, "Preventing Access to Americans' Bulk Sensitive Personal Data and United States Government Data by Countries of Concern" (Data Security Program)[20] to protect U.S. national security from countries of concern that may seek to collect and weaponize Americans' most sensitive personal data and government-related data. DOJ also investigates and prosecutes criminal violations of the covered statutes.

C. The Objective of the Proposed Rule

The proposed rule sets forth regulations for a FinCEN whistleblower program that would incentivize whistleblowers to report violations of the BSA, IEEPA, TWEA, and the Kingpin Act to Treasury, DOJ, or to their employer. FinCEN expects that the increased submission of such tips would enhance the ability of Treasury and DOJ to enforce the BSA, U.S. trade and economic sanctions, the Outbound Investment Security Program, and the Data Security Program, and to further other U.S. government law enforcement efforts.

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[19] *See* 31 CFR Part 850 for regulatory provisions pertaining to U.S. investments in certain national security technologies and products in countries of concern implementing EO 14105 of Aug. 9, 2023, *Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern*, 88 FR 54867 (Aug. 11, 2025), https://www.federalregister.gov/documents/2023/08/11/2023-17449/addressing-united-states-investments-in-certain-national-security-technologies-and-products-in. The Comprehensive Outbound Investment National Security Act of 2025 (COINS Act, enacted via the FY 2026 NDAA on Dec 18, 2025), codifies and expands the US Outbound Investment Security Program. Among other things, the COINS Act directs the Secretary of the Treasury to issue regulations restricting United States outbound investments in countries of concern involving certain technologies. The OIS program regulations that became effective on January 2, 2025, and the obligations they set out, remain in effect until the Treasury Department issues regulations pursuant to the COINS Act.

[20] *See* 28 CFR Part 202 on regulations implementing EO 13873 of May 15, 2019, *Securing the Information and Communications Technology and Services Supply Chain*, 84 FR 22698 (issued May 15, 2019; published May 17, 2019), https://www.federalregister.gov/documents/2019/05/17/2019-10538/securing-the-information-and-communications-technology-and-services-supply-chain, and EO 14117 of Feb. 28, 2024, *Preventing Access to Americans' Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern*, 89 FR 15421 (issued Feb. 28, 2024; published Mar. 1, 2024), https://www.federalregister.gov/documents/2024/03/01/2024-04573/preventing-access-to-americans-bulk-sensitive-personal-data-and-united-states-government-related.

III. Section-by-Section Analysis

This proposed rule would revise the regulations implementing the BSA in part 1010 (General Provisions) of chapter X (Financial Crimes Enforcement Network) of title 31, Code of Federal Regulations (CFR). Specifically, the regulations proposed in this rule would replace the existing regulations concerning rewards for individuals, which are currently set forth at 31 CFR 1010.930 ("Rewards for informants"), and rename the section "Whistleblower incentives and protections."

The proposed regulations are organized to generally track the lifecycle of a whistleblower's interaction with the government, beginning with the submission of information and continuing through the receipt of an award.[21] The proposed regulations are thus organized in the following order: (a) Definitions; (b) Submission of original information; (c) Whistleblower eligibility; (d) Submission of an award application; (e) Award adjudication; (f) Confidentiality and protections; (g) Appeals; and (h) No amnesty.

A. Proposed 31 CFR 1010.930(a) – Definitions

In proposed 31 CFR 1010.930(a), FinCEN defines and further clarifies certain statutory terms that appear in section 5323 and defines additional terms important to the implementation of the program. For purposes of the section-by-section analysis, FinCEN has summarized definitions in the order they appear in the remaining sections of the proposed rule. This approach allows FinCEN to explain these definitions more fully by contextualizing them within the broader rule.

B. Proposed 31 CFR 1010.930(b) – Submission of original information.

Proposed 31 CFR 1010.930(b) describes the steps a whistleblower would be required to follow when submitting original information. A whistleblower must submit original information to be eligible for an award. Consistent with section 5323, proposed 31 CFR 1010.930(b)(1)–(2)

[21] In designing the proposed Whistleblower Program, FinCEN has reviewed the rules implementing the SEC and CFTC whistleblower programs. *See* 17 CFR 240.21F-1 – 240.21F-18; 17 CFR 165.

describe the steps and timelines a whistleblower would be required to follow when submitting original information under the Whistleblower Program.[22]

1. Definition of the term "original information"

Proposed 31 CFR 1010.930(b) uses the term "original information," which FinCEN would define in 31 CFR 1010.930(a)(8). This proposed definition includes the three elements that appear in the statutory definition of that term at 31 U.S.C. 5323(a)(3), as well as an additional fourth element proposed by FinCEN. To be eligible for awards, whistleblowers must satisfy all four elements.

The first element of the "original information" definition, as set forth in proposed 31 CFR 1010.930(a)(8)(i), requires that original information be derived from the independent knowledge or independent analysis of a whistleblower. This aligns with the first element of the "original information" definition in 31 U.S.C. 5323(a)(3)(A). For additional clarity, FinCEN is proposing to define the terms "independent knowledge" and "independent analysis" in the proposed regulations.

The term "independent knowledge" is defined in proposed 31 CFR 1010.930(a)(6) to mean factual information known to the whistleblower that is not exclusively obtained from publicly available sources. Importantly, the proposed definition of independent knowledge would not require that a whistleblower have direct, first-hand knowledge of potential violations. Instead, independent knowledge may be obtained from any of the whistleblower's experiences, observations, or communications, subject to the exclusion for knowledge obtained exclusively from public sources, such as corporate press releases and filings, media reports, and information on the Internet. Thus, for example, under proposed 31 CFR 1010.930(a)(6), a whistleblower has "independent knowledge" of information even if that knowledge derives from facts or other information conveyed to the whistleblower by third parties. An individual may learn about violations of the covered statutes without being personally involved in the conduct.

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[22] 31 U.S.C. 5323(a)(5)(A).

In turn, the term "independent analysis" is defined in proposed 31 CFR 1010.930(a)(5) to mean the evaluation of information by the whistleblower, acting alone or in combination with others, in a manner that results in material insights into or interpretations of the significance of such information that are not generally known or available to the public. The proposed definition is intended to acknowledge that analysis is often the product of collaboration among two or more individuals. In addition, the proposed definition clarifies that the term "independent analysis" includes the evaluation of information that may be generally known or available to the public as long as it results in material insights into or interpretations of the significance of such information that are not generally known or available to the public.

The second element of the "original information" definition, as set forth in proposed 31 CFR 1010.930(a)(8)(ii), requires that the information provided by the whistleblower is not known to Treasury[23] or DOJ from any other source, unless the whistleblower is the original source of the information. This requirement aligns with the second element of the "original information" definition in 31 U.S.C. 5323(a)(3)(B). Whether information is already known to Treasury or DOJ would depend on whether the information was known by the team investigating the matter or available through the sources reasonably accessible to them in the normal course of their job duties. For example, if a whistleblower provided information about a company that allegedly violated sanctions, FinCEN would consider the information establishing the fact of the violative conduct to have been already known to OFAC if another part of OFAC had already collected that information and it was reasonably accessible to the OFAC investigative team.

The third element of the "original information" definition, as set forth in proposed 31 CFR 1010.930(a)(8)(iii), requires that the information not be exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit,

[23] For additional clarity, Treasury would be defined in proposed 31 CFR 1010.930(a)(11) and would include FinCEN and OFAC. The definition is also meant to clarify the regulations by distinguishing between references to FinCEN specifically and references to Treasury more broadly or its various components. *See also supra* note 3 (describing terms used in the proposed rule with respect to Treasury and DOJ).

or investigation, or from the news media or any other publicly available source, unless the whistleblower is a source of the information. This requirement generally aligns with the third element of the "original information" definition in 31 U.S.C. 5323(a)(3)(C) with one addition: in order to prevent the submission of information copied from public sources such as the Internet, FinCEN proposes to add to the list of sources set out in 31 U.S.C. 5323(a)(3)(C) the phrase "or any other publicly available source."[24]

The fourth element of the "original information" definition, as proposed in 31 CFR 1010.930(a)(8)(iv), requires the information be provided to Treasury or DOJ for the first time: (i) after January 1, 2021, for violations of the BSA; or (ii) after December 29, 2022, for violations of IEEPA, TWEA, and the Kingpin Act and for conspiracies to violate the BSA, IEEPA, TWEA, and the Kingpin Act. FinCEN will only make awards for original information that whistleblowers submitted to FinCEN after the enactment of the statutes that established the Whistleblower Program and amended its scope, respectively, namely the AML Act (which provided for incentives to submit original information about violations of the BSA) and the AML Whistleblower Improvement Act (which expanded the program to include incentives to submit original information about violations of IEEPA, TWEA, and the Kingpin Act and conspiracies to violate the BSA, IEEPA, TWEA, and the Kingpin Act).

2. Proposed 31 CFR 1010.930(b)(1) – Procedures for submitting original information.

Proposed 31 CFR 1010.930(b)(1)(i) requires each whistleblower to initially submit information to FinCEN using FinCEN's "Tip, Complaint, or Referral" form ("Form TCR") or a successor form. The form would be submitted to FinCEN through a secure online portal. The initial submission of information via a standardized form would enable FinCEN to receive, review, and track each whistleblower's submission. As envisioned, FinCEN would

[24] Under 31 U.S.C. 5323(a)(3)(C), the term "original information" means information that "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."

automatically assign each Form TCR its own unique reference number, which would then be used to track the whistleblower's submission throughout its lifecycle, including connecting submissions to award applications. Subject to instructions from FinCEN, the Form TCR also may be used by a whistleblower or a whistleblower's attorney to submit additional information supplementing the whistleblower's initial submission of information. The whistleblower and, if applicable, the whistleblower's attorney, would be required to certify the information contained in the Form TCR is true, correct, and complete to the best of their knowledge. FinCEN notes that if two or more whistleblowers decide to submit a tip jointly, then each whistleblower still must submit their own respective Form TCR. Similarly, if an attorney represents two or more whistleblowers who are submitting a tip jointly, then the attorney still must submit a Form TCR for each of their whistleblower clients.

Proposed 31 CFR 1010.930(b)(1)(i) also states that information may be submitted "in another matter authorized by FinCEN" to account for situations in which FinCEN may, at its discretion, waive the requirement to submit a Form TCR (or a successor form). FinCEN authorization to submit information in another manner could take various forms. A whistleblower must comply with the requirements set forth in proposed 31 CFR 1010.930(b)(1)(i) to be eligible to receive an award.

FinCEN notes that a whistleblower may submit original information to FinCEN on their own behalf. Thus, a whistleblower is not required to hire an attorney to represent the whistleblower in connection with the submission of information to FinCEN, although the whistleblower may choose to do so. Moreover, a whistleblower may choose to submit original information to FinCEN anonymously. A whistleblower who chooses to submit a Form TCR to FinCEN anonymously may do so on their own behalf or through an attorney, as provided for in 31 CFR 1010.930(b)(1)(ii). It is the whistleblower's choice whether to retain an attorney when submitting a Form TCR anonymously.

If an anonymous whistleblower decides not to retain an attorney, then they should consider including in their Form TCR an email address or telephone number that investigators may use to contact them.

3. Proposed 31 CFR 1010.930(b)(2) – Original information must be submitted to FinCEN.

Proposed 31 CFR 1010.930(b)(2) explains that, if a whistleblower provides original information to a part of Treasury other than FinCEN, or to DOJ, or to their employer, then the whistleblower must also provide that same original information to FinCEN within a reasonable time to be eligible for an award. If a whistleblower provides original information to a part of Treasury other than FinCEN, or to DOJ, or to their employer, then FinCEN will consider that the whistleblower provided original information as of the date of the whistleblower's first submission of the information to one of these authorities or persons.

The purpose of the proposal to require whistleblowers to submit information to FinCEN—even after they have already submitted the same information to another part of Treasury, or DOJ, or their employer—is to ensure that each whistleblower's submission is received, reviewed, and tracked by FinCEN. It is not intended to discourage whistleblowers from communicating directly with another office of Treasury (like OFAC), or with DOJ, or their employer.

Furthermore, although whistleblowers are expected to submit original information in the manner described in 31 CFR 1010.930(b), FinCEN notes that whistleblowers who submitted original information to FinCEN before the effective date of a final rule would not need to resubmit their original information—on a Form TCR or otherwise—should the rule become effective. Since whistleblowers who submit information before the rule's effective date would not be able to do so on a Form TCR, FinCEN would deem their submissions to be "in another manner authorized by FinCEN" under proposed 31 CFR 1010.930(b)(1)(i) and to be timely for the purpose of proposed 31 CFR 1010.930(b). However, whistleblowers who submit original information to Treasury or DOJ or their employer before the effective date of the final rule

would still be required to otherwise comply with all requirements set forth in proposed 31 CFR 1010.930 to be eligible to receive an award.

Proposed 31 CFR 1010.930(b)(2) would also state that, as described in paragraph (c)(5)(iii), certain whistleblowers who obtained information because they meet the criteria in paragraphs (A) or (B) of proposed 31 CFR 1010.930(c)(5)(iii) 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. As described below, the rationale for the 120-day waiting period is to provide entities that invest in strong internal audit and compliance programs the opportunity to benefit from such programs. The 120-day waiting period provides these entities the opportunity to review and assess information that could relate to a violation of a covered statute and, where they deem it appropriate, address and/or voluntarily disclose the information to the government. The waiting period is calibrated to help avoid any incentive for whistleblowers to undermine effective compliance programs while minimizing any potential harm from delayed reporting of tips to law enforcement.

Should the proposed rule be finalized, FinCEN intends to provide separate public guidance as to what constitutes "reasonable time" under proposed 31 CFR 1010.930(b)(2), including with respect to whistleblowers who are subject to the waiting period set forth in proposed 31 CFR 1010.930(c)(5)(iii). Furthermore, FinCEN notes that neither Treasury nor DOJ is required to communicate with, inform, or update whistleblowers regarding investigative, prosecutorial, or enforcement developments or decisions relating to the information submitted by a whistleblower.

C. Proposed 31 CFR 1010.930(c) – Whistleblower eligibility.

Proposed 31 CFR 1010.930(c) sets forth the eligibility requirements for an award under the Whistleblower Program. More specifically, proposed 31 CFR 1010.930(c)(1)–(4) describes the specific requirements a whistleblower must meet to be eligible for an award, while proposed 31 CFR 1010.930(c)(5) describes categories of individuals ineligible to receive an award.

Furthermore, proposed 31 CFR 1010.930(c)(6) sets forth the reasons and procedures for barring an individual from the Whistleblower Program, as well as the consequences of being permanently barred.

Consistent with 31 U.S.C. 5323(a)(5), proposed 31 CFR 1010.930(a)(12) would define the term "whistleblower" as any individual who provides, or any two or more individuals acting jointly who provide, information relating to a possible violation of a covered statute or a possible conspiracy to violate a covered statute to Treasury or to DOJ, or to the employer of the individual or individuals, including as part of the job duties of the individual or individuals. This would mean that whistleblowers may be U.S. or non-U.S. natural persons (individuals). However, legal entities and legal arrangements, such as corporations, limited liability companies (LLCs), and trusts, could not be whistleblowers under the Whistleblower Program. The proposed definition aligns with the statutory definition at 31 U.S.C. 5323(a)(5)(A) with one non-substantive alteration: the proposed definition references "covered statute" as that term is defined in the proposed rule instead of listing each covered statute by name and/or citation.[25]

1. Proposed 31 CFR 1010.930(c)(1) – In general.

Proposed 31 CFR 1010.930(c)(1) summarizes four specific requirements a whistleblower must meet to be eligible for an award under the Whistleblower Program. The first requirement, set forth in proposed 31 CFR 1010.930(c)(1)(i), is that the whistleblower must have voluntarily provided original information. The second requirement, set forth in proposed 31 CFR 1010.930(c)(1)(ii), is that the whistleblower was the original source of the original information. The third requirement, set forth in proposed 31 CFR 1010.930(c)(1)(iii), is that the whistleblower's original information led to the successful enforcement of a covered action or related action. These three requirements, as set forth in the proposed regulations, are consistent with the statutory requirements in 31 U.S.C. 5323(b)(1). The fourth requirement a whistleblower

[25] Under 31 U.S.C. 5323(a)(5)(A), a "whistleblower" is an individual who provides information relating to a violation of "[subchapter II of Title 31], chapter 35 or section 4305 or 4312 of title 50, [or] the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901 et seq.)."

must meet in order to be eligible for an award, as set forth in proposed 31 CFR 1010.930(c)(1)(iv), is that a whistleblower must provide to Treasury and DOJ certain additional information upon request. Such information could include explanations and other assistance to allow Treasury and DOJ to evaluate and use the original information that the whistleblower submitted and testimony or other evidence relating to whether the whistleblower is eligible or otherwise satisfies any of the conditions for an award. FinCEN expects that a whistleblower who wishes to receive an award will cooperate with Treasury and DOJ in connection with any investigation related to the whistleblower's original information.

To more fully explain the requirements set out in 31 CFR 1010.930(c)(1)(i)–(iii), the following subsections provide an explanation of the terms utilized in these provisions and defined in 31 CFR 1010.930(a), as well as certain related terms that are also set forth in 31 CFR 1010.930(a).[26]

a. "Covered Action" and Related Terms.

The term "covered action" is defined in proposed 31 CFR 1010.930(a)(3) to mean any single judicial or administrative action brought by Treasury or DOJ under a covered statute or for a conspiracy to violate a covered statute that has been successfully enforced and results in monetary sanctions exceeding $1,000,000.[27] The proposed definition of "covered action" is consistent with the statutory definition of "covered judicial or administrative action" at 31 U.S.C. 5323(a)(1), with the addition of references to the terms "covered statute" and "successful enforcement," which are also defined in FinCEN's proposed rule. The term "covered statute" is utilized in lieu of specific references and/or citations to each individual statute listed in the statutory definition of a "covered judicial or administrative action"; this is for ease of reference.

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[26] However, other concepts (*e.g.*, "voluntary" and "original source") that are also utilized in 31 CFR 1010.930(c)(1)(i)–(iii) appear in subsequent sections of the proposed regulations. For this reason, these concepts are discussed in the section analysis corresponding to those proposed regulations.

[27] FinCEN anticipates that Treasury and/or DOJ may bring actions based on violations of a covered statute whose successful enforcement results in monetary sanctions in an amount that is equal to or less than $1,000,000. Such a single action would not qualify as a "covered action" and could not give rise to a claim for an award. Moreover, as explained below, any judicial or administrative action brought by the IRS or pursuant to authority delegated to it in 31 CFR 1010.810(c) and (g) will not be considered a "covered action".

The term "successful enforcement" relates to the finality of the resolution of a covered action or related action. In addition, the proposed definition of "covered action" would provide an explanation of: whether and when multiple actions may be treated as a single action; how FinCEN will determine whether the $1,000,000 monetary sanctions threshold has been exceeded; and certain types of actions that FinCEN would not consider to be covered actions.

Whether monetary sanctions resulting from an action exceed $1,000,000 is relevant to when an action is a "covered action." Only an action that results in monetary sanctions exceeding $1,000,000 may be considered a covered action. In turn, the term "monetary sanctions" would be defined in proposed 31 CFR 1010.930(a)(7) to mean any monies agreed to or ordered to be paid in a covered action or in a related action, including penalties, fines, settlement payments, disgorgement, and interest. FinCEN's proposed definition would align with the statutory definition under 31 U.S.C. 5323(a)(2), but would also add fines and settlement payments to the listed examples of monies.

Monetary sanctions do not include blocked property, forfeiture, restitution, or victim compensation payments. Under the proposed definition, property or interests in property that are blocked or frozen would not be considered monetary sanctions because, among other things, they are not monies agreed to or ordered to be paid. Furthermore, consistent with 31 U.S.C. 5323(b)(4)(C), FinCEN would interpret monies collected by the U.S. Victims of State Sponsored Terrorism Fund (VSSTF)—established pursuant to the Justice for United States Victims of State Sponsored Terrorism Act—to be victim compensation payments under the proposed rule and thus excluded from the definition of monetary sanctions. A final determination about whether a covered action or related action's proceeds, or a portion of them, must be deposited into the VSSTF may not occur until after that covered action or related action is publicly announced. Therefore, there may be a difference between the monetary sanctions agreed to or ordered to be paid as disclosed in a press release or other public disclosure regarding a resolution and the monetary sanctions actually collected for purposes of calculating the amount of an award owed

to a whistleblower for a covered or related action. Moreover, assessing whether deposits must be made into the VSSTF must occur prior to any adjudication of whistleblower awards and may impact the timing of the publication of a notice of covered action and the timing of the award adjudication process.[28] A notice of covered action is described at proposed 31 CFR 1010.930(d) and discussed in the corresponding section-by-section analysis.

Monetary sanctions would include all qualifying monies agreed to or ordered to be paid by all defendants or respondents, and arising from all claims that are brought within that action without regard to which specific defendants or respondents, or which specific claims, were included in the action as a result of the information that the whistleblower provided. For example, if FinCEN successfully enforced an action alleging one BSA violation based on whistleblower information and a second BSA violation not based on whistleblower information, then whether the resulting monetary sanctions exceeded $1,000,000 would be determined based on the combined monetary sanctions from both of the alleged BSA violations—even though only one of the two violations was based on whistleblower information. Similarly, if DOJ successfully enforced an action alleging a BSA count based on whistleblower information and a bank fraud count under section 1344 of title 18 based on whistleblower information, then whether the resulting monetary sanctions exceeded $1,000,000 would be determined based on the combined monetary sanctions from the two counts—even though only one of the two counts arises under a covered statute.

This approach would enhance the incentives for individuals to come forward and report potential violations of the covered statutes and would avoid the challenges associated with attempting to allocate monetary sanctions involving multiple individuals and claims based upon the select individuals and claims reported by whistleblowers.

However, under the definition of "covered action" in proposed 31 CFR 1010.930(a)(3)(i), when determining whether the required threshold for monetary sanctions has been met, FinCEN

[28] The discussion of FinCEN's process for calculating the monetary award amount is found in Section III.A.

would not take into account any monetary sanctions that the whistleblower agreed to or is ordered to pay. The rationale for this exclusion is to prevent wrongdoers from financially benefiting from their own misconduct.

Furthermore, under the proposed rule's definition of "covered action" in 31 CFR 1010.930(a)(3)(iii), FinCEN would have the discretion to treat as a single covered action two or more judicial or administrative actions that arise out of substantially the same facts and are successfully enforced at substantially the same time, even if one or more of the actions do not, on their own, exceed the $1,000,000 monetary threshold, provided that such actions collectively exceed this threshold. As explained in a preceding paragraph, at least one claim in each separate action must be an alleged violation of a covered statute.

An implication of this approach would be that FinCEN may aggregate the monetary sanctions imposed in multiple Treasury or DOJ actions arising out of a whistleblower's submission. This would include instances when covered actions may individually result in monetary sanctions less than $1,000,000 each, but which collectively result in monetary sanctions exceeding $1,000,000, for purposes of satisfying the monetary threshold. For example, if a whistleblower's submission leads to separate enforcement actions by FinCEN, OFAC, and DOJ, each with total sanctions of $500,000, then FinCEN may aggregate the $500,000 from each of the three separate enforcement actions to meet the monetary threshold and treat them as one "covered action" for the purpose of making an award. This approach would avoid denying a whistleblower consideration for an award simply because Treasury and/or DOJ brought separate actions against parties involved in the same or closely related conduct.

Moreover, FinCEN would consider that separate judicial or administrative actions arose out of substantially the same facts when the separate actions share such a close factual basis that they might logically have been brought together in one action. In making a determination that two or more actions arise out of substantially the same facts, FinCEN would take a number of factors into consideration, including, but not limited to, whether the separate actions involve the

same or similar: parties (whether named as defendants/respondents or simply named within the complaint or order); factual allegations; alleged violations of the covered statutes; or transactions or occurrences. For example, where a financial institution that pleaded guilty to criminally violating the AML program requirement of the BSA and paid a criminal fine in excess of $1,000,000 and that same financial institution also entered into a Consent Order with FinCEN imposing a civil money penalty in excess of $1,000,000 to resolve a parallel civil investigation for willfully violating the relevant FinCEN's AML program rule requirement, and both cases involved substantially similar facts giving rise to such AML program violations, FinCEN may, at its discretion, elect to treat both of those actions as a single covered action.

FinCEN would consider that two or more actions were successfully enforced at substantially the same time if the actions were brought in or around the same period of time of one another as a result of one or more parallel investigations by Treasury and/or DOJ. In exercising its discretion and deciding whether two or more actions were successfully enforced at substantially the same time, FinCEN intends to apply a flexible approach. For instance, the proposed definition would not require that the separate actions be filed, announced, or resolved at the same time.

Finally, under the proposed definition of "covered action," an action brought by the IRS or pursuant to authority delegated to it in 31 CFR 1010.810(c) and (g) would not be considered a covered action. Thus, in addition to IRS actions, certain actions by DOJ would not be considered covered actions, such as a case brought by DOJ to enforce BSA provisions regarding records and reports of foreign bank and financial accounts (FBARs). The IRS has authority to investigate and enforce FBAR violations pursuant to 31 CFR 1010.810(c)(2) and (g), and when such cases are referred to DOJ by IRS for prosecution, they would be excluded from the definition of a covered action. However, whistleblowers may be eligible for an award for providing information to the IRS about such violations under the IRS's whistleblower program.

b. "Related Action" and Related Terms.

The term "related action" would be defined in proposed 31 CFR 1010.930(a)(9) to mean any judicial or administrative action brought by an appropriate agency or authority and successfully enforced that is based upon the original information provided by a whistleblower pursuant to this section that led to the successful enforcement of a covered action. This definition is consistent with the definition of the same term at 31 U.S.C. 5323(a)(4) except that it uses the phrase "appropriate agency or authority" in lieu of the list of governmental authorities set out in the statute.

Whether an action was brought by an appropriate agency or authority is relevant to whether an action is a "related action." Thus, for additional clarity, FinCEN proposes to define the term "appropriate agency or authority" at 31 CFR 1010.930(a)(1) to mean a Federal or state government agency or other Federal or state entity with legal authority to bring a judicial or administrative action for noncompliance with law, including Treasury, DOJ, or any appropriate Federal authority, a state attorney general in connection with any criminal investigation, or any appropriate state regulatory authority. This proposed definition largely tracks the authorities listed at 31 U.S.C. 5323(g)(4)(D)(i)(I)–(III), which is cross-referenced within 31 U.S.C. 5323(a)(4).

The existence of a covered action is a prerequisite to the existence of a related action. Therefore, a whistleblower may only receive an award based on the voluntary submission of original information that led to the successful enforcement of a related action if that original information also led to the successful enforcement of a covered action, and the whistleblower otherwise meets all the criteria set forth in the proposed rule. Although an action brought under an authority that was delegated to the IRS or another agency by FinCEN would not be considered a covered action, under the proposed definition, it may be considered a related action, provided that Treasury and/or DOJ also brought a covered action. FinCEN is soliciting

comments on whether this prerequisite for a related action is sufficiently clear in the text of the proposed rule.

c. "Successful Enforcement" of a Covered or Related Action.

The term "successful enforcement," when used with respect to a covered action or related action, is defined in proposed 31 CFR 1010.930(a)(10). The term relates to the finality of the resolution of a covered action or related action, which is important for the administrability of the Whistleblower Program. FinCEN believes it would be premature for FinCEN to pay an award based on the judgment in a covered action or a related action that was later subject to a successful appeal and reversed or vacated. In addition, doing so could also damage the integrity and long-term viability of the program.

2. Proposed 31 CFR 1010.930(c)(2) – Voluntariness.

Under 31 U.S.C. 5323(b)(1), whistleblowers are eligible for awards only when they "voluntarily" provide original information about violations of covered statutes or conspiracies to commit such offenses to Treasury, or DOJ, or their employer. Proposed 31 CFR 1010.930(c)(2) would define a whistleblower's submission of original information as "voluntary" if it is made prior to any request, inquiry, or demand about a matter related or relevant to the original information in the whistleblower's submission from Congress, any agency or authority, or a self-regulatory organization, to the whistleblower or the whistleblower's attorney or other representative, or in some circumstances to a whistleblower's employer.

Proposed 31 CFR 1010.930(c)(2) would cover both formal and informal requests. An example of a formal request would be a subpoena; an example of an informal request would be a request made by an appropriate agency or authority to an individual to provide information where the submission of that information is not legally mandated but at the individual's own discretion. Under the proposed approach, a whistleblower's submission would not be considered voluntary, and the whistleblower would not be eligible for an award, if, before submitting original information, the whistleblower was contacted by Treasury, DOJ, or any of the other

authorities, about a matter to which the original information in the whistleblower's submission is relevant, regardless of whether the whistleblower's response was compelled by subpoena or other applicable law. FinCEN intends to provide separate public guidance that explains and provides examples for determining the voluntariness of a whistleblower's submission of information when a request, inquiry, or demand is made by any of the aforementioned authorities to a whistleblower's employer.

3. Proposed 31 CFR 1010.930(c)(3) – Original source.

Proposed 31 CFR 1010.930(c)(3) requires that to be eligible for an award, a whistleblower must be an "original source" of the information provided. This requirement is derived from the term "original information," which is defined at 31 U.S.C. 5323(a)(3)(A) and further clarified at proposed 31 CFR 1010.930(a)(8)(i). Proposed 31 CFR 1010.930(c)(3) states that a whistleblower is the "original source" of original information if the original information is derived from the independent knowledge or independent analysis of that whistleblower.[29] The whistleblower would be responsible for establishing to FinCEN's satisfaction that the whistleblower was the original source of the original information.

4. Proposed 31 CFR 1010.930(c)(4) – Original information leading to successful enforcement.

Section 5323(b)(1) provides that FinCEN shall pay an award to, or awards to, one or more whistleblowers who voluntarily provided original information to the employer of the whistleblower(s), Treasury, or DOJ that led to the successful enforcement of the covered action or related action. Section 5323(f)(1) further provides that any determination made under section 5323, "including whether, to whom, or in what amount to make awards," shall be at the discretion of FinCEN. Consistent with these statutory provisions, proposed 31 CFR 1010.930(c)(4)(i) would provide that FinCEN will determine whether original information submitted by the whistleblower led to the successful enforcement of a covered action or related

[29] The terms "independent knowledge" and "independent analysis" are defined in proposed 31 CFR 1010.930(a)(5)-(6).

action. Although FinCEN expects to consult with other relevant government agencies, as appropriate, the final determination would be made by FinCEN. In making the determination, FinCEN would use the criteria set forth in proposed 31 CFR 1010.930(c)(4)(ii), which describes the circumstances in which original information has led to the successful enforcement of a covered or related action. These circumstances, described in the proposed 31 CFR 1010.930(c)(4)(ii), depend on whether the information provided by a whistleblower concerned conduct that was previously under investigation or examination.

Specifically, as described in proposed 31 CFR 1010.930(c)(4)(ii)(A), for information regarding conduct not previously under investigation or examination by an appropriate agency or authority, FinCEN would consider whether the whistleblower's original information was sufficiently specific, credible, and timely to cause an appropriate agency or authority to commence, open, or reopen an examination or investigation, or inquire concerning different conduct as part of a current examination or investigation. FinCEN would also consider whether an appropriate agency or authority successfully enforced a covered action or related action based in whole or in part on specific conduct that was the subject of the whistleblower's original information. However, the proposed standard for whether original information led to the successful enforcement of a covered action would be higher for information about conduct already under investigation or examination than for information regarding conduct not previously under investigation or examination. As described in proposed 31 CFR 1010.930(c)(4)(ii)(B), FinCEN would consider whether original information regarding conduct already under investigation or examination by an appropriate agency or authority significantly contributed to the successful enforcement of the covered action or related action.

FinCEN recognizes there may be circumstances where information received from a whistleblower in relation to an ongoing investigation is so significant to the successful enforcement of a covered action or related action that a whistleblower award should be considered. For example, a whistleblower who had not been questioned or provided documents

in connection with an ongoing investigation may come forward with evidence that was not previously available to investigators and is critical to an appropriate agency or authority's ability to satisfy its burden of proof and therefore enables it to successfully enforce an action. Under such circumstances, an eligible whistleblower who otherwise meets the requirements set forth in the proposed rule would be considered for an award.

Proposed 31 CFR 1010.930(c)(4)(iii) details the conditions under which FinCEN would consider original information to have been submitted by the whistleblower. Specifically, FinCEN would consider original information to have been submitted by the whistleblower when the whistleblower submitted the original information to FinCEN consistent with proposed 31 CFR 1010.930(b), which outlines the procedures for submitting original information. In the case of a whistleblower who first submits original information to their employer and later reports that same original information to FinCEN consistent with the requirements of proposed 31 CFR 1010.930(b), FinCEN will still consider the original information to have been reported by the whistleblower, even if the employer provides the whistleblower's original information, in any form, to Treasury or to DOJ.

5. Proposed 31 CFR 1010.930(c)(5) – Ineligibility.

As set forth in proposed 31 CFR 1010.930(c)(5), certain categories of individuals are ineligible to receive an award under the Whistleblower Program. The categories of ineligible individuals in proposed 31 CFR 1010.930(c)(5) include both the categories set forth in 31 U.S.C. 5323(c)(2) and additional categories that FinCEN is proposing to include. Specifically, proposed 31 CFR 1010.930(c)(5)(i) would provide that a whistleblower is not eligible for an award based on certain employment or criminal history.

Under proposed 31 CFR 1010.930(c)(5)(i)(A)(1), a whistleblower is ineligible for an award if the whistleblower is, or was at the time the whistleblower acquired the original information, a member, officer, employee, or contractor of an appropriate regulatory or banking agency, Treasury, DOJ, a law enforcement agency, Congress (including a committee of

Congress), or a self-regulatory organization, and was acting in the normal course of their job duties. This provision aligns with the statute at 31 U.S.C. 5323(c)(2)(A), but would also include members, officers, employees, or contractors of Congress (including a committee of Congress) or a self-regulatory organization. The proposed approach is designed to avoid creating incentives for individuals who have privileged access to potentially sensitive or valuable information based on their job positions or oversight roles from abusing their positions and/or responsibilities for their own personal benefit. In addition, FinCEN believes that it would be appropriate to exclude an employee of a self-regulatory organization (SRO) (like the Financial Industry Regulatory Authority or FINRA, the SRO for the U.S. securities market, and the National Futures Association or NFA, the SRO for the U.S. derivatives market) from receiving an award that is based on the employee's submission of information that employee learned while working for the SRO, given a SRO's oversight role.

Proposed 31 CFR 1010.930(c)(5)(i)(B), which is consistent with 31 U.S.C. 5323(c)(2)(B), makes ineligible any whistleblower who is convicted of a criminal violation related to the covered action or related action for which the whistleblower otherwise could receive an award.

Proposed 31 CFR 1010.930(c)(5)(ii) provides that certain foreign officials are ineligible for an award. FinCEN believes that the payment of awards to foreign officials could have negative repercussions for U.S. foreign relations, including creating a perception that the United States is interfering with foreign sovereignty and potentially undermining foreign government cooperation under existing treaties (including mutual legal assistance treaties). While not specifically required by the statute, FinCEN proposes excluding such individuals from award eligibility to avoid certain potential negative foreign policy repercussions

Proposed 31 CFR 1010.930(c)(5)(iii) provides that certain whistleblowers who obtained information because they meet the criteria in paragraphs (A) or (B) of proposed 31 CFR 1010.930(c)(5)(iii) must wait at least one hundred and twenty (120) calendar days from when

they obtained the information before providing it to FinCEN to be eligible for an award. The first category of individuals would be any whistleblower who obtained the original 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 internal 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. The second category of individuals would be any whistleblower who obtained the original information because the whistleblower was an employee whose principal duties involve audit or compliance responsibilities, or the whistleblower was employed by, or otherwise associated with, a firm retained to perform audit or compliance functions for an entity. The rationale for requiring these categories of individuals to wait before reporting their original information to FinCEN is to provide entities that invest in strong internal audit and compliance programs the opportunity to benefit from such programs. The waiting period provides these entities the opportunity to review and assess information that could relate to a violation of a covered statute and, where they deem it appropriate, address and/or voluntarily disclose the information to the government. Furthermore, the waiting period is calibrated to help avoid any incentive for whistleblowers to undermine effective audit or compliance programs while minimizing any potential harm from delayed reporting of tips to law enforcement.

Proposed 31 CFR 1010.930(c)(5)(iv) sets forth other bases on which a whistleblower would be ineligible to receive an award. Proposed 31 CFR 1010.930(c)(5)(iv)(A) provides that a whistleblower is not eligible to receive an award if the whistleblower obtained original information through certain means. Specifically, 31 CFR 1010.930(c)(5)(iv)(A)(1) provides that a whistleblower is ineligible to receive an award if they obtained original information through a communication that was subject to attorney-client privilege or work product doctrine, or a similar legal concept provided for under foreign law, unless the disclosure is otherwise permitted by the applicable Federal or state law and/or attorney conduct rules. While this exclusion from

eligibility is not required by the statute, its purpose is to avoid creating an incentive for attorneys or others to breach attorney-client privilege to seek an award. FinCEN recognizes that such an incentive could interfere with the ability of companies and individuals to share information with an attorney while seeking legal advice.

Other bases for ineligibility are set forth in 31 CFR 1010.930(c)(5)(iv)(A)(2)-(4). In particular, proposed 31 CFR 1010.930(c)(5)(iv)(A)(2) provides that a whistleblower is ineligible to receive an award if they obtained original information in connection with the legal representation of a client on whose behalf the whistleblower or the whistleblower's employer or firm provided services, and the whistleblower seeks to use the information for their own benefit, unless the disclosure is otherwise permitted by the applicable Federal or state law and/or attorney conduct rules. Furthermore, 31 CFR 1010.930(c)(5)(iv)(A)(3) makes ineligible whistleblowers who obtained original information by a means or in a manner that is determined by a United States court to violate applicable Federal or state criminal law. Finally, to prevent evasion of the aforementioned ineligibility rules, proposed 31 CFR 1010.930(c)(5)(iv)(A)(4) provides that an individual who acquires information from another individual who is ineligible pursuant to proposed 31 CFR 1010.930(c)(5)(iv)(A)(1) through (3) is similarly ineligible for an award.

Additionally, proposed 31 CFR 1010.930(c)(5)(iv)(B) would render a whistleblower ineligible for an award if, in the whistleblower's submission, other dealings with Treasury or with DOJ, or dealings with another appropriate agency or authority in connection with a related action, the whistleblower: knowingly and willfully makes any false, fictitious, fraudulent, or misleading statement or representation; uses any false writing or document, knowing the writing or document contains any false, fictitious, fraudulent, or misleading statement or entry; or knowingly and willfully omits any fact, the omission of which causes other statements or representations made by the whistleblower to be misleading. The first and second criteria mirror statutory provisions at 31 U.S.C. 5323(h). Consistent with the express statutory obligation to exclude whistleblowers under the first and second criteria, FinCEN proposes including the third

criterion to prohibit conduct similar in nature to the conduct prohibited by the first and second criteria. The proposed approach is important to incentivize whistleblowers to provide valuable information that contributes significantly to the U.S. government's enforcement efforts. Furthermore, the receipt of false or misleading information would compromise the integrity of the Whistleblower Program and waste the U.S. government's time and resources.

Determinations about whether a whistleblower is eligible to receive an award, or is ineligible to receive an award, would be at FinCEN's discretion. FinCEN notes that a determination that a whistleblower is ineligible to receive an award for any reason would not deprive the individual of the anti-retaliation protections set forth in 31 U.S.C. 5323(g)(1), which are discussed further in the section-by-section analysis for proposed 31 CFR 1010.930(f).

7. **Proposed 31 CFR 1010.930(c)(6) – Permanent bar.**

Where an individual repeatedly makes frivolous or fraudulent submissions or otherwise hinders the effective and efficient operation of the Whistleblower Program, proposed 31 CFR 1010.930(c)(6) provides that FinCEN may permanently bar that individual from the Whistleblower Program. Under the proposed approach, FinCEN may also permanently bar any attorney representing such individual. FinCEN notes that this proposed regulation is designed to protect the integrity of the Whistleblower Program and to ensure that Treasury and DOJ do not waste critical resources investigating false or misleading leads received through the Whistleblower Program. It is not, however, intended to exclude individuals who make a good faith effort to provide valuable information but, for instance, make technical errors when submitting such information.

Under proposed 31 CFR 1010.930(c)(6)(i), there are three instances where FinCEN would be able to permanently bar an individual from the Whistleblower Program.

First, an individual could be barred if the individual makes, or causes to be made, at least three award applications that FinCEN finds to be frivolous, fraudulent, dishonest, abusive, or

lacking a colorable connection between the information submitted to FinCEN and the covered action or related action for which the individual is seeking an award.

Second, an individual could be barred if the individual makes, or causes to be made, at least three submissions of information that FinCEN finds to be frivolous, fraudulent, dishonest, or abusive.

Third, an individual could be barred if, in FinCEN's judgment, the individual directly or indirectly in connection with any submission of information or application made pursuant to the Whistleblower Program or with respect to any covered action or related action, to have misled or otherwise hindered any appropriate agency or authority, SRO, member of Congress, or committee of Congress by: knowingly and willfully making any materially false, fictitious, fraudulent, or misleading statement or representation; using any false writing or document, knowing that the writing or document contains any false, fictitious, fraudulent, or misleading statement or entry; or knowingly and willfully omitting any fact, the omission of which causes other statements or representations made by the whistleblower to be misleading.

Under the proposed approach, FinCEN would retain the ability to decide whether any individual should be permanently barred from the Whistleblower Program for any of these three reasons.

Additionally, proposed 31 CFR 1010.930(c)(6)(ii) provides that, before issuing a permanent bar, FinCEN would be required to notify the individual to be permanently barred and afford the individual 30 calendar days to respond in writing. FinCEN would be required to notify the individual of its final determination after the response period ends. The consequences of a permanent bar are described in proposed 31 CFR 1010.930(c)(6)(iii). Under the proposed approach, an individual who has been permanently barred would not be eligible to receive an

award, and an attorney who has been permanently barred also would not be permitted to represent any other individual in connection with the Whistleblower Program.[30]

D. Proposed 31 CFR 1010.930(d) – Submission of an award application.

Proposed 31 CFR 1010.930(d) describes the procedures a whistleblower must follow when applying for an award, including the timing and form of the submission. The proposed regulation also sets out the procedures that a whistleblower must follow if they submitted original information anonymously and provides that a whistleblower may submit a request to withdraw an award application.

1. Proposed 31 CFR 1010.930(d)(1) – Timing.

The award application process would begin with the publication of a notice of a covered action on a Treasury website. Such notices would include covered actions brought by Treasury and, when DOJ provides such information to FinCEN, covered actions brought by DOJ. Whether a judicial or administrative action is a covered action, and thus whether a notice of a covered action should be published, shall be at FinCEN's discretion. Proposed 31 CFR 1010.930(d)(1) would provide that a whistleblower must submit an application for an award based on a covered action to FinCEN no later than ninety (90) calendar days after the relevant notice of covered action was first published. With respect to related actions, the proposed rule would provide that a whistleblower must submit an application for an award based on a related action no later than one hundred and eighty (180) calendar days after either: (i) the date on which the relevant notice of covered action was first published on a Treasury website; or (ii) the successful enforcement of that related action. FinCEN expects a whistleblower would be able to apply for an award based on both a covered action and a related action in the same application.[31]

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[30] For example, an attorney may be permanently barred from representing any other individual in connection with the Whistleblower Program if the attorney thrice signs the counsel certification form and submits a Form TCR that FinCEN later determined contains fraudulent information. In such an example, the attorney would have caused to be made three submissions of information that FinCEN found to be fraudulent.

[31] As a practical matter, the deadline to apply for an award based on a covered action is the same regardless of whether and when a related action is successfully enforced. Proposed 31 CFR 1010.930(d)(1) provides a

Under the proposed approach, whistleblowers would bear complete responsibility for monitoring for whether and when a relevant notice of covered action has been published. Accordingly, Treasury and DOJ are not required to contact whistleblowers directly to alert them to the publication of notices of covered actions. Whistleblowers would also bear complete responsibility for tracking related actions, including whether such actions have been successfully enforced. As with covered actions, Treasury and DOJ would not be required to contact whistleblowers directly to alert them to whether and when a related action was successfully enforced.

Finally, FinCEN notes that, with respect to any award applications that were submitted prior to the effective date of a rule implementing this Whistleblower Program, should the proposed rule be finalized, whistleblowers would be required to resubmit any such award applications to FinCEN after the effective date of the final rule. In submitting their award application, whistleblowers would be required to use the award application form that FinCEN is proposing as part of this rulemaking, namely the "Application for Award for Original Information Submitted Pursuant to 31 U.S.C. 5323" ("Form WB-APP") or a successor form, and otherwise comply with the requirements set out in the rule.

2. Proposed 31 CFR 1010.930(d)(2) – Form.

Proposed 31 CFR 1010.930(d)(2) requires each application for an award be submitted using the Form WB-APP or a successor form. The Form WB-APP would be submitted through a secure online portal or in another manner expressly authorized by FinCEN. The purpose of limiting the manner in which whistleblowers may submit an award application would be to ensure that every whistleblower's submission is received, reviewed, and tracked by FinCEN's Office of the Whistleblower, which is responsible for adjudicating awards. If, in the future, FinCEN issues a successor form to the Form WB-APP, it will provide notice and make the form

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whistleblower must submit an application for an award based on a covered action to FinCEN no later than ninety (90) calendar days after a relevant notice of covered action was first published.

publicly available, consistent with its obligations under the Paperwork Reduction Act. As with the Form TCR, each whistleblower and, if applicable, their attorney, would be required to certify the information contained in the Form WB-APP is true, correct, and complete to the best of their knowledge.

3. Proposed 31 CFR 1010.930(d)(3) – Award application based on anonymous submission of original information.

Proposed 31 CFR 1010.930(d)(3) describes award application procedures for a whistleblower who submitted original information to FinCEN anonymously. Whistleblowers who first submitted original information anonymously may then submit an award application that discloses their identity. Such whistleblowers would be required to confirm their identity as the source of the original information previously submitted to FinCEN. However, whistleblowers who submitted original information anonymously and who also submit an award application on an anonymous basis must be represented by an attorney. In such a case, the whistleblower's attorney would submit to FinCEN a completed Form WB-APP (or successor form) that would not disclose the whistleblower's identity and would be signed solely by the whistleblower's attorney. Separately, the anonymous whistleblower would be required to provide their attorney with a completed Form WB-APP signed by the whistleblower under penalty of perjury. The form signed by the anonymous whistleblower would be required to be provided to the whistleblower's attorney before the attorney submits a completed Form WB-APP to FinCEN on the whistleblower's behalf. The original form signed by the anonymous whistleblower would be required to be retained by the attorney and would not be submitted to FinCEN immediately. The whistleblower's attorney would be required to certify they have verified the identity of the whistleblower on whose behalf the form is being submitted by viewing the whistleblower's valid, unexpired government-issued identification (*e.g.*, driver's license, passport). Consistent with 31 U.S.C. 5323(d)(2)(B), proposed 31 CFR 1010.930(d)(3)(ii)(C) would state that, upon FinCEN's request and prior to the payment of any award, the whistleblower's attorney would be required to disclose the identity of the whistleblower to FinCEN by providing the

whistleblower's signed original form, and the whistleblower's identity would be required to be verified in a form and manner that is acceptable to FinCEN.

4. Proposed 31 CFR 1010.930(d)(4) – Withdrawal.

Proposed 31 CFR 1010.930(d)(4) permits the whistleblower to withdraw a Form WB-APP by submitting a written request to FinCEN at any time after the Form WB-APP is submitted.

E. Proposed 31 CFR 1010.930(e) – Award adjudication.

Proposed 31 CFR 1010.930(e) explains the award adjudication process, including that FinCEN would determine whether a whistleblower is eligible to receive an award and FinCEN's process for determining the amount of an award. The proposed regulation also describes the process and timing with respect to the disposition of award applications and includes a requirement that each whistleblower enter into certain agreements prior to the issuance or payment of an award. Finally, the proposed regulation provides that all payments of an award are subject to the availability of funds and also provides clarity around entitlement to and timing of payments.

1. Proposed 31 CFR 1010.930(e)(1) – Eligible whistleblower.

Proposed 31 CFR 1010.930(e)(1) explains that, after receipt of a Form WB-APP or a successor form, FinCEN would determine pursuant to proposed 31 CFR 1010.930(c) whether the whistleblower is eligible to receive an award. As discussed above in section III.C. of this notice, proposed 31 CFR 1010.930(c) sets out the factors for whistleblower eligibility, which includes, among other things, that the whistleblower's original information led to the successful enforcement of a covered action or related action. Decisions regarding the investigation or prosecution of allegations made by whistleblowers in their submissions of original information are at the discretion of Treasury or DOJ.

2. Proposed 31 CFR 1010.930(e)(2) – Agreements.

Proposed 31 CFR 1010.930(e)(2) requires each whistleblower to enter into any confidentiality agreement and, in appropriate circumstances, any advance or amortizing payment agreement, requested by and in a form acceptable to FinCEN prior to any issuance or payment of an award.

3. Proposed 31 CFR 1010.930(e)(3)(i)-(iii) – Amount of award.

Consistent with 31 U.S.C. 5323(b)(1), the proposed rule provides for the payment of an award within the statutorily mandated range (10 to 30 percent, in total, of monetary sanctions collected in covered actions or related actions). As provided in 31 U.S.C. 5323(c)(1)(A) and (f)(1), FinCEN has discretion to determine the amount of an award. Accordingly, proposed 31 CFR 1010.930(e)(3) outlines how FinCEN would proceed in determining the amount. Furthermore, consistent with 31 U.S.C. 5323(b)(3)(A), the award would be paid from the Financial Integrity Fund, subject to the amount available in the fund.

As required by 31 U.S.C. 5323(b)(1), proposed 31 CFR 1010.930(e)(3)(i) provides that FinCEN will make an award to an eligible whistleblower for submission of original information that has led to the successful enforcement of a covered action or related action of, in the aggregate, not less than 10 percent and not more than 30 percent of the collected monetary sanctions imposed in the covered action or related actions. To determine the amount of monetary sanctions "collected," FinCEN would utilize the definition of the term "collected" proposed at 31 CFR 1010.930(a)(2). Accordingly, FinCEN would considered monetary sanctions to be collected when monies have been deposited and credited in satisfaction of any order, agreement, or settlement and: (i) in the case of a covered action, Treasury's confirmation that such deposit and credit have been processed, or (ii) in the case of a related action, FinCEN's receipt of confirmation from the appropriate agency or authority that such deposit and credit have been processed. Furthermore, at FinCEN's discretion and pursuant to an advance or amortizing payment agreement described in section 1010.930(e)(2), monetary sanctions may be considered collected when monies are reasonably expected to be deposited and credited in

satisfaction of any order, agreement, or settlement in a covered action or related action. FinCEN's proposal reflects the fact that Treasury, DOJ, or certain appropriate agencies or authorities may allow a party to pay monetary sanctions in installments, and receipt of the full amount of monetary sanctions a party is obligated to pay may not occur immediately after resolution of the covered action or related action.[32] Thus, in certain appropriate circumstances and at FinCEN's discretion, the proposed regulation would allow for an award to be made on the basis of an amount received in partial satisfaction of an agreement or order to pay. Additionally, the proposed rule would state that, when determining the collected monetary sanctions on which the award amount range will be based, FinCEN would not include amounts paid by a whistleblower or paid by an entity the liability of which is determined by Treasury or DOJ to be based substantially on conduct that the whistleblower directed, planned, initiated, or controlled. The rationale for excluding these payments is to prevent wrongdoers from financially benefiting from their own misconduct.

Proposed 31 CFR 1010.930(e)(3)(ii) explains how the 10 to 30 percent range for the award amount would apply when there are multiple whistleblowers. Under the proposed rule, if FinCEN makes awards to more than one whistleblower in connection with the same covered action or related action, FinCEN would make separate awards for each whistleblower and would have discretion to determine the appropriate award percentage for each whistleblower. Consistent with the statute, however, the total amount awarded to all whistleblowers in the aggregate would not be less than 10 percent or greater than 30 percent of the collected monetary sanctions imposed.

Proposed 31 CFR 1010.930(e)(3)(iii) describes the factors that, in addition to proposed 31 CFR 1010.930(e)(3)(i) and (ii), FinCEN shall consider when determining the specific amount

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[32] In addition, where a party resolves a matter with multiple government agencies in parallel, the total amount of the penalty imposed may be different than the amount that is ultimately collected in the event one or more government agencies were to credit against the payments owed to them any payments made to the other government agencies. For example, in a case where FinCEN and DOJ respectively imposed $100 million and $50 million monetary penalties, if FinCEN agreed to credit the $50 million paid to DOJ against the $100 million owed to FinCEN, then the total amount collected would be only $100 million, not $150 million.

of an award. Proposed 31 CFR 1010.930(e)(3)(iii)(A) through (C) are consistent with the three criteria set forth in the statute; proposed 31 CFR 1010.930(e)(3)(iii)(D) through (G) would be four additional criteria that FinCEN is proposing to add, pursuant to the statute and in consultation with the Attorney General, which provides authority to consider "additional relevant factors" established by rule or regulation when determining the amount of an award.[33]

Under proposed 31 CFR 1010.930(e)(3)(iii)(A), FinCEN would consider the significance of the information provided by the whistleblower to the success of the covered action or related action(s) and, under proposed 31 CFR 1010.930(e)(3)(iii)(B), FinCEN would consider the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the covered action or related action(s), including by providing additional information in connection with the investigations that led to the covered action or related action. In addition, under proposed 31 CFR 1010.930(e)(3)(iii)(C), FinCEN would consider the programmatic interest of Treasury or DOJ in deterring violations of the covered statutes (namely the BSA, Kingpin Act, IEEPA, and TWEA) by making awards to whistleblowers. FinCEN would apply these statutory criteria when determining whether to make an award on the basis of either a covered action or related action.

In addition to the three factors that FinCEN is statutorily required to consider, FinCEN proposes four additional factors that it will consider when determining the amount of an award. Specifically, proposed 31 CFR 1010.930(e)(3)(iii)(D) provides that, where applicable, FinCEN shall take into consideration the culpability or involvement of the whistleblower in matters associated with the covered action or related action(s). Proposed 31 CFR 1010.930(e)(3)(iii)(E) provides that, where applicable, FinCEN may consider whether the whistleblower unreasonably delayed reporting the violations. Proposed 31 CFR 1010.930(e)(3)(iii)(F) provides that, where applicable, FinCEN may consider the whistleblower's role with respect to an entity's internal compliance or reporting systems. Finally, proposed 31 CFR 1010.930(e)(3)(iii)(G) provides

[33] 31 U.S.C. 5323(c)(1)(B)(iv).

that, where applicable, FinCEN may consider the lawful considerations and conclusions of an appropriate agency or authority, or a self-regulatory organization relating to the whistleblower and the covered action. FinCEN anticipates that, before it makes a final determination with respect to proposed 31 CFR 1010.930(e)(3)(iii)(G), FinCEN would consult the appropriate agency or authority or self-regulatory organization, as appropriate. However, any final decisions about whether and how to weigh this factor would be made by FinCEN at its discretion.

FinCEN anticipates that the determination of awards amounts pursuant to proposed 31 CFR 1010.930(e)(3)(iii)(A) through (G) would involve the review of the specific circumstances surrounding each award. To permit case-specific review and award determinations, the proposed criteria would give FinCEN broad discretion when determining the amount of any particular award. Depending upon the facts and circumstances of each case, some criteria may not be applicable or may deserve greater weight than others.

4. Proposed 31 CFR 1010.930(e)(3)(iv) – Certain awards of $15 million or less.

Proposed 31 CFR 1010.930(e)(3)(iv) establishes that, when 30 percent of the monetary sanctions collected in any covered action or related action(s), in aggregate, is $15 million or less, there is a presumption the award payment to the whistleblower (or to two or more whistleblowers together) will be the maximum allowed: 30 percent.[34] If FinCEN determines that proposed 31 CFR 1010.930(e)(3)(iv) applies, then FinCEN need not consider the criteria set forth in proposed 31 CFR 1010.930(e)(3)(iii)(D) through (G) when determining the amount to award. FinCEN believes this maximum award presumption would further incentivize whistleblowers to come forward with information across a range of actions, including those that concern relatively smaller dollar amounts. Furthermore, FinCEN believes that applying it would

[34] For example, if a whistleblower's voluntary submission of original information led to the successful enforcement of a covered action by FinCEN in which FinCEN imposed and collected $50 million in monetary sanctions, then the rule would apply because 30 percent of the monetary sanctions collected would be $15 million. Similarly, if a whistleblower's voluntary submission of original information led to the successful enforcement of a covered action by FinCEN and a related action by a state attorney general, in each of which the enforcing agency imposed and collected $15 million in monetary sanctions, then the rule would apply because 30 percent of the monetary sanctions collected, in aggregate, would be $9 million.

result in meaningful efficiencies by reducing the time and resources necessary for FinCEN to adjudicate lower dollar award applications.

However, the proposed rule provides that FinCEN may consider certain negative factors that may lead FinCEN to determine that the maximum award presumption should not be applied. For example, if FinCEN was aware that a whistleblower undermined the relevant company's internal compliance or reporting functions, then FinCEN may decide that the presumption should not be applied. The proposed rule also provides that an otherwise eligible whistleblower would not receive the maximum award pursuant to proposed 31 CFR 1010.930(e)(3)(iv) if FinCEN determines, at its discretion, that paying the whistleblower the maximum amount would undermine the integrity or objectives of the Whistleblower Program. This exception would preserve FinCEN's discretion where relevant circumstances counsel against awarding a whistleblower the statutory maximum. For example, one objective of the Whistleblower Program is to enhance Treasury and DOJ's efforts to enforce national security laws, including sanctions issued under IEEPA. If the whistleblower participated in a conspiracy to violate sanctions that was unrelated to the conduct that formed the basis of the covered action, then FinCEN could determine not to award the maximum amount to the whistleblower. FinCEN expects to invoke this exception rarely and, likely, in instances involving egregious facts.

5. Proposed 31 CFR 1010.930(e)(3)(v) – Actions subject to multiple awards programs.

Proposed 31 CFR 1010.930(e)(3)(v) addresses potential additional considerations that may be relevant in connection with actions subject to multiple awards programs. The proposed regulation would provide that if FinCEN determines that another whistleblower program established by the Federal government or a state government has paid or will pay the whistleblower in connection with the same related action for which the whistleblower is applying for an award, then FinCEN may consult with the other relevant Federal government or state government agencies and, if ascertainable, may consider several factors. Specifically, FinCEN would consider: the nature, scope, and impact of the misconduct charged in the related action,

and its relationship to the enforcement of a covered statute or the relevant covered action; the degree to which the monetary sanctions imposed in the related action arise out of the conduct that was the subject of the covered action; the existence and substance of agreements or other understandings between Treasury or DOJ and the other Federal government or state government agencies; and whether the whistleblower is eligible for an award from the other award program and whether the administrators of the other award program have paid or are likely to pay an award in an amount FinCEN deems reasonable, using the factors in proposed 31 CFR 1010.930(e)(3)(iii) and (iv) or adopting the analysis of the other agency, to the whistleblower for the related action. Under this proposed approach, in light of this consultation and consideration, FinCEN may determine to award less than 10 percent of the collected monetary sanctions imposed in a related action where the total amount that has been or may be paid to the whistleblower by FinCEN and the separate whistleblower monetary award program(s) would not be less than 10 percent of the collected monetary sanctions imposed in the related action.

6. Proposed 31 CFR 1010.930(e)(3)(vi) – Related action awards.

Proposed 31 CFR 1010.930(e)(3)(vi) clarifies that FinCEN would only make an award to a whistleblower based on a related action when it has sufficient information from which to determine that all the elements of a related action have been satisfied. Specifically, before making such an award, FinCEN must have sufficient information from which it can conclude that a judicial or administrative action brought by an appropriate agency or authority was, in fact, based upon the original information provided by a particular whistleblower and that the information provided by the whistleblower also led to the successful enforcement of a particular covered action. Although FinCEN expects that most appropriate agencies or authorities would provide information to FinCEN that would allow it to determine whether an action met the aforementioned criteria of a related action, there might be situations in which agencies are unable to share this kind of information (for instance, where disclosure of the information by the appropriate agency or authority is prohibited by 26 U.S.C. 6103). In such a situation, FinCEN

would only make an award if the whistleblower provided sufficient information from which FinCEN could conclude that the criteria for a related action had been met.

7. Proposed 31 CFR 1010.930(e)(4) – Disposition of applications.

Proposed 31 CFR 1010.930(e)(4) describes the process and timing with respect to the disposition of applications. Specifically, proposed 31 CFR 1010.930(e)(4)(i) provides that FinCEN would inform whistleblowers in writing of the preliminary determinations of their applications. A preliminary determination of an application would be sent electronically, by mail, or both, to the whistleblower or the whistleblower's attorney before the delivery of a final determination. The whistleblower would then be afforded at least 30 calendar days to respond to a preliminary determination. Proposed 31 CFR 1010.930(e)(4)(ii) provides that a final determination of an application would be delivered electronically, by mail, or both, to the whistleblower or the whistleblower's attorney. To further transparency, proposed 31 CFR 1010.930(e)(4)(iii) states that FinCEN would periodically publish its final determinations of awards, related press releases, and other summaries in a manner consistent with the confidentiality requirements set forth in section 5323(g)(4) and proposed 31 CFR 1010.930(f).

8. Proposed 31 CFR 1010.930(e)(5) – Availability of funds.

Proposed 31 CFR 1010.930(e)(5) clarifies that any payment of an award issued to whistleblowers by FinCEN is subject to amounts being available in the fund described in 31 U.S.C. 5323(b). If there are insufficient amounts available in the fund to pay an award to a whistleblower or whistleblowers when a payment should otherwise be made, then the whistleblower or whistleblowers will be paid when amounts become available in the fund. FinCEN would determine, at its discretion, how to prioritize outstanding payments, if any.

9. Proposed 31 CFR 1010.930(e)(6) – Entitlement to payment.

Proposed 31 CFR 1010.930(e)(6) provides clarification that a recipient of a whistleblower award is entitled to payment on the award only to the extent that a monetary sanction is collected in the covered action or in a related action upon which the award is based.

Consistent with the definition of "collected" set out in proposed 31 CFR 1010.930(a)(2) and as explained in the context of determining the amount of an award under proposed 31 CFR 1010.930(e)(3)(i), monetary sanctions are generally considered to be collected when the monies have been deposited, credited, and confirmed by the relevant government agency or authority. However, consistent with 31 CFR 1010.930(a)(2), FinCEN may also, at its discretion and in connection with an advance or amortizing payment agreement, consider monetary sanctions to be collected when monies are reasonably expected to be deposited and credited in satisfaction of any order, agreement, or settlement in a covered action or related action.

Based on its experience with prior enforcement actions, FinCEN anticipates that there may be instances in which the subject of a covered action will make payments in satisfaction of the monetary sanctions owed over a defined period of time. In such circumstances, FinCEN may elect to consider, among other things, the amount of monetary sanctions that the subject has paid to date, the amount FinCEN reasonably expects the subject to pay, and the balance of the Financial Integrity Fund. Such an approach would be an alternative to waiting until full receipt of the final payment in the defined period of time, which could delay payments to eligible whistleblowers. In such situations, FinCEN expects to enter into an agreement with the whistleblower to specify the terms of payment, as described in proposed 31 CFR 1010.930(e)(2), before issuing an award.

10. Proposed 31 CFR 1010.930(e)(7) – Timing of payment.

Proposed 31 CFR 1010.930(e)(7) addresses the timing for when FinCEN will pay a whistleblower award. Specifically, payment of a whistleblower award for a monetary sanction collected in a covered action or related action shall be made following the later of: the date on which the monetary sanction is collected; or the completion of the appeals process set forth in 1010.930(g) for all whistleblower award claims arising from the notice of covered action, in the case of any payment of an award for a monetary sanction collected in a covered action, or the

related action, in the case of any payment of an award for a monetary sanction collected in a related action.

F. Proposed 31 CFR 1010.930(f) – Confidentiality and protections.

FinCEN recognizes that preserving confidentiality and protecting whistleblowers against retaliation may be as important as financial incentives in encouraging potential whistleblowers to come forward with information. Proposed 31 CFR 1010.930(f) describes FinCEN's proposed approach toward protecting whistleblowers who take any lawful actions described in 31 U.S.C. 5323(g)(1).

1. Proposed 31 CFR 1010.930(f)(1) – Sharing original information with government agencies.

Consistent with 31 U.S.C. 5323, which creates an incentive for whistleblowers to submit information for use by Treasury and DOJ, proposed 31 CFR 1010.930(f)(1) confirms that FinCEN would make the information submitted by whistleblowers to FinCEN available to Treasury and DOJ. FinCEN may also, at FinCEN's discretion, make original information available to other appropriate agencies and authorities and/or to foreign law enforcement authorities.

2. Proposed 31 CFR 1010.930(f)(2) – Confidentiality.

Proposed 31 CFR 1010.930(f)(2) reflects the confidentiality requirements set forth in 31 U.S.C. 5323(g)(4) with respect to information that could reasonably be expected to reveal the identity of a whistleblower. Consistent with 31 U.S.C. 5323(g)(4), the proposed rule requires that FinCEN not disclose any information, including information provided by a whistleblower to FinCEN, which could reasonably be expected to reveal the identity of a whistleblower, except in circumstances described in the statute and the rule.

In line with 31 U.S.C. 5323(g)(4)(A), proposed 31 CFR 1010.930(f)(2)(i)(A) expressly authorizes disclosure of information that could reasonably be expected to reveal the identity of a whistleblower when disclosure is required to a defendant or respondent in connection with a

public proceeding instituted by any appropriate agency or authority or a foreign law enforcement authority. For example, in a covered action brought as a criminal prosecution by DOJ, disclosure of a whistleblower's identity may be required, in light of the requirement of the Sixth Amendment of the Constitution that a criminal defendant have the right to be confronted with witnesses against him.[35] Such disclosure also may be required to fulfill the government's discovery obligations, which are generally established by Federal Rules of Criminal Procedure 16 and 26.2, 18 U.S.C. 3500 (the Jencks Act), *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972).

Proposed 31 CFR 1010.930(f)(2)(i)(B), in turn, would authorize disclosure to any appropriate agency or authority, or a foreign law enforcement authority, when FinCEN determines that it is necessary to accomplish the purposes of the covered statutes, including to safeguard the financial system from illicit use, combat money laundering and related criminal activity, and promote national security. Also, in line with 31 U.S.C. 5323(g)(4)(A), proposed 31 CFR 1010.930(f)(2)(i)(C) authorizes disclosure in accordance with the Privacy Act of 1974 (5 U.S.C. 552a). Finally, proposed 31 CFR 1010.930(f)(2)(i)(D) also clarifies that FinCEN is authorized to disclose information that could reasonably be expected to reveal the identity of a whistleblower with the consent of the whistleblower to whom the information pertains.[36] For example, in cases where there are multiple whistleblowers, disclosure could enable, among other things, consenting whistleblowers to negotiate with the other whistleblowers as to how any award could be allocated amongst them.

Consistent with 31 U.S.C. 5323(g)(4)(C), proposed 31 CFR 1010.930(f)(2)(ii) states that nothing this section shall be construed to limit the ability of DOJ, at its discretion, to present any information—including information provided by a whistleblower to FinCEN, which could

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[35] *See* U.S. Const. amend. VI.

[36] A disclosure with the consent of the individual is also in accordance with the Privacy Act. *See generally* 5 U.S.C. 552a(b). "No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains [subject to 12 exceptions]." *Id.*

reasonably be expected to reveal the identity of a whistleblower—to a grand jury or to limit the ability of Treasury, DOJ, or any appropriate agency or authority to share evidence with potential witnesses or defendants in the course of an ongoing civil or criminal investigation. Disclosures such as these are sometimes necessary for DOJ to progress an investigation and charge crimes based on the information DOJ receives from whistleblowers, among other evidence. Such disclosures are therefore also necessary for whistleblower information to aid DOJ in the civil and criminal enforcement of the covered statutes.

3. Proposed 31 CFR 1010.930(f)(3) – Prohibition against retaliation.

Proposed 31 CFR 1010.930(f)(3) reflects the provisions set forth in 31 U.S.C. 5323(g)(1), which prohibit an employer from retaliating against a whistleblower.[37] Furthermore, any whistleblower who alleges discharge or other discrimination, or is otherwise aggrieved by an employer, in violation of 31 U.S.C. 5323(g)(1), may seek relief under 31 U.S.C. 5323(g)(2), by filing a complaint with the Department of Labor and, in certain circumstances, bring an action against the employer in the appropriate district court of the United States. For purposes of the anti-retaliation prohibition in 31 U.S.C. 5323(g)(1), the term "whistleblower" is defined more broadly to include any individual who takes, or two or more individuals acting jointly who take, any actions described in 31 U.S.C. 5323(g)(1)(A)-(C). The actions described in the statute include, among other things, providing certain information to Congress, as well as testifying in or assisting in certain Treasury or DOJ actions or investigations. Whistleblowers may refer to www.Whistleblowers.gov for more information about the Department of Labor's whistleblower protection program, as well as the regulations implementing the anti-retaliation provisions at 29

[37] This provision does not apply to any employer that is subject to section 33 of the Federal Deposit Insurance Act (12 U.S.C. 1831j) or section 213 or 214 of the Federal Credit Union Act (12 U.S.C. 1790b, 1790c). *See* 31 U.S.C. 5323(g)(6).

C.F.R. 1992.101-1992.115.[38] In addition, FinCEN may enforce 31 U.S.C. 5323(g)(1) using mechanisms within the scope of its authority, including under 31 U.S.C. 5321.

4. Proposed 31 CFR 1010.930(f)(4) – Communications with individuals reporting possible violations.

Proposed 31 CFR 1010.930(f)(4) provides notice that no person may take any action to impede an individual from communicating directly with Treasury or DOJ about any possible violations of the covered statutes or any potential conspiracies to commit any such offenses. This includes, but is not limited to, employers who knowingly and by any means discourage, hinder, or delay a whistleblower from communicating directly with Treasury or DOJ. The Whistleblower Program encourages whistleblowers to report violations of the covered statutes by providing incentives and protections. Efforts to impede a whistleblower's direct communications with Treasury or DOJ about a potential violation of a covered statute, however, would appear to undermine such incentives. The proposed rule would not, however, address the effectiveness or enforceability of confidentiality agreements in situations other than communications with Treasury or DOJ about any possible violations of the covered statutes or any potential conspiracies to commit any such offenses.

5. Proposed 31 CFR 1010.930(f)(5) – Non-waiver.

Consistent with 31 U.S.C. 5323(j)(1), proposed 31 CFR 1010.930(f)(5) would confirm that the rights and remedies provided for in section 5323 may not be waived by any agreement, policy, form, or condition of employment, including by a predispute arbitration agreement. Under the proposed regulation, which is consistent with the statute, no predispute arbitration agreement shall be valid or enforceable if the agreement requires arbitration of a dispute.

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[38] Department of Labor, Occupational Safety and Health Administration, *Procedures for the Handling of Retaliation Complaints Under the Anti-Money Laundering Act of 2020 (AMLA)*, 90 FR 3021 (Jan. 14, 2025), https://www.federalregister.gov/documents/2025/01/14/2025-00539/procedures-for-the-handling-of-retaliation-complaints-under-the-anti-money-laundering-act-of-2020. The Department of Labor's interim final rule for handling retaliation complaints made in connection with the Whistleblower Program became effective on January 14, 2025.

G. Proposed 31 CFR 1010.930(g) – Appeals.

Section 5323(f) provides for certain rights of appeal of FinCEN's determinations with respect to awards. Consistent with this provision, proposed 31 CFR 1010.930(g)(1) would describe claimants' appeal rights and provide notice that any determination with respect to an award application, including whether, to whom, or in what amount to make awards, shall be at FinCEN's discretion.

With regard to the appeal process, proposed 31 CFR 1010.930(g)(1) would state that, consistent with 31 U.S.C. 5323(f), a claimant may file an appeal with the appropriate court of appeals of the United States not more than 30 calendar days after the determination is issued by FinCEN. Additionally, consistent with the statute, the proposed rule would define the scope of an appeal: any final determination made by FinCEN with respect to an award may be appealed except the determination of the amount of an award made in accordance with 31 U.S.C. 5323(c)(1) and proposed 31 CFR 1010.930(e). Thus, claimants do not have the right to appeal the amount of any award issued.

Furthermore, proposed 31 CFR 1010.930(g)(2) would designate the materials that shall be included in the record on any appeal. As proposed, the record includes any tips and applications for an award submitted by a claimant (*e.g.*, Form TCRs or Form WB-APPs), FinCEN's preliminary determination, materials submitted by a claimant in response to FinCEN's preliminary determination, and other materials FinCEN considered on or after the issuance of a notice of covered action in issuing the final or preliminary determination with respect to the claimant's applications. If FinCEN permanently barred a claimant, then the record on appeal may also include any materials FinCEN considered on or after the occurrence of any circumstances with respect to the claimant's permanent bar.

Certain categories of information, however, would be excluded from the record of appeal under proposed 31 CFR 1010.930(g)(3). Specifically, exempted information includes any pre-decisional or internal deliberative process materials or any materials containing information that

is classified, law enforcement sensitive, reported pursuant to the BSA, or is otherwise protected from disclosure, such as grand jury materials or discovery in covered actions or related actions that are subject to a protective order. Under the proposed approach, FinCEN may also exclude from the record on appeal any materials that do not relate directly to the claimant when more than one claimant has sought an award based on a single notice of covered action. Therefore, as proposed, FinCEN may exclude from the record of appeal Form TCRs, Form WB-APPs, or any other submissions or filings made by another whistleblower or claimant in connection with the Whistleblower Program. Additionally, documents and records held with or solely in the possession of other government agencies would not be part of the record on appeal. Under proposed 31 CFR 1010.930(g)(3), as applied to the aforementioned example, information gathered by FinCEN from OFAC about the role that the whistleblower's information played in OFAC's investigation might be included in the record on appeal. However, any information that OFAC did not share with FinCEN would not be a part of the record on appeal.

For additional clarity, FinCEN notes that decisions regarding the investigation or prosecution of allegations made by whistleblowers in their submissions of original information are at the discretion of Treasury or DOJ. Such decisions are not considered determinations or dispositions under this part and are not appealable by whistleblowers.

H. Proposed 31 CFR 1010.930(h) – No amnesty.

Proposed 31 CFR 1010.930(h) would state that the Whistleblower Program does not provide amnesty or immunity from any future investigation by Treasury, DOJ, or any other agency or authority. Whistleblowers who have not participated in misconduct would not need amnesty. However, some whistleblowers who provide original information that leads to the successful enforcement of a covered action or related action may have participated in wrongdoing and, as a result of that participation, may have potential exposure to civil or criminal liability. The fact that a whistleblower may assist in investigations conducted by, or enforcement actions brought by, Treasury or DOJ does not preclude Treasury, DOJ, or another agency or

authority from bringing an action against the whistleblower for the whistleblower's own conduct in connection with violations of the covered statutes or other laws. These individuals would not be immune from prosecution.

Individuals who participated in wrongdoing may still have an incentive to report information to FinCEN notwithstanding the fact that the Whistleblower Program would not provide amnesty. Indeed, whistleblowers with potential civil or criminal liability relating to violations of the covered statutes that they report to FinCEN could remain eligible for an award. Pursuant to proposed 31 CFR 1010.930(c)(5)(i)(B), a culpable whistleblower would be made ineligible to receive an award based on their own wrongdoing only if the whistleblower was convicted of a criminal violation related to the covered action or related action.

IV. Request for Comment

FinCEN invites comment on all aspects of the proposed rule, and specifically seeks comment on the following questions[39]:

1. Are the definitions of terms in proposed 31 CFR 1010.930(a) sufficiently clear? Are there additional terms that should be clarified?

2. Should FinCEN require that separate judicial or administrative actions be successfully enforced at substantially the same time in order to be considered one "covered action"? Should there be a specific time period during which the separate actions need be brought in order to be successfully enforced "at substantially the same time"? When determining whether two or more judicial or administrative actions brought by Treasury or DOJ should be considered one "covered action," is it appropriate for FinCEN to consider whether the actions arise out of substantially the same facts? Should FinCEN also consider any other factors?

3. Proposed 31 CFR 1010.930(b)(2) states that if a whistleblower provides original information to a part of Treasury other than FinCEN, or to DOJ, or to their employer, then the

[39] FinCEN also requests comments on a number of issues related to the regulatory analysis. These are identified and discussed separately in Section VI below. *See, specifically* Sections VI.E. and F.

whistleblower must also provide that same original information to FinCEN within a reasonable time to be eligible for an award. Would it be clearer to set forth a deadline in terms of a number of calendar days rather than require that the whistleblower take an action within a "reasonable time"? If it would be clearer to set forth a deadline in terms of a number of calendar days, what number would be appropriate?

4. Are the ineligibility criteria set forth in proposed 31 CFR 1010.930(c)(5) appropriate? Are there additional categories of individuals that should be made ineligible to receive an award? For example, should whistleblowers who obtained information: (i) because the whistleblower was an officer, director, trustee, or partner of an entity and another person informed the whistleblower of allegations of misconduct, or the whistleblower learned the information in connection with the entity's processes for identifying, reporting, and addressing possible violations of law; or (ii) because the whistleblower was an employee whose principal duties involved compliance or internal audit responsibilities, still be eligible to receive an award if (a) the whistleblower has a reasonable basis to believe that disclosure of the information is necessary to prevent the relevant entity from engaging in conduct that is likely to cause substantial injury to the U.S. financial system or U.S. national security; or (b) the whistleblower has a reasonable basis to believe that the relevant entity is engaging in conduct that will impede an investigation of the misconduct?

5. Are the ineligibility criteria set forth in proposed 31 CFR 1010.930(c)(5)(i)(B), which states that whistleblowers who have been convicted of a criminal violation related to the covered action or related action, for which the whistleblower otherwise could receive an award, too narrow? For example, should individuals who are liable for civil violations related to the covered or related action also be considered ineligible for an award? Or, are the provisions at proposed 31 CFR 1010.930(a)(3)(i) (excluding any monetary sanctions paid by a whistleblower in calculating the monetary threshold for a covered action), 31 CFR 1010.930(e)(3)(i)(A) (excluding monetary sanctions paid by the whistleblower in calculating the amount of monetary

sanctions collected), and 31 CFR 1010.930(e)(3)(iii)(D) (considering the culpability of the whistleblower in determining the amount of an award) sufficient to prevent awarding culpable whistleblowers in those circumstances?

6. Is ninety (90) calendar days after the publication of a notice of covered action a reasonable amount of time to give whistleblowers to complete and submit an application for an award based on that covered action?

7. Should FinCEN require whistleblowers to bear responsibility for determining whether and when a related action is successfully enforced? Is one hundred and eighty (180) calendar days after the successful enforcement of a related action a reasonable amount of time to give whistleblowers to complete and submit an application for an award based on that related action?

8. Are the criteria set forth in proposed 31 CFR 1010.930(e)(3)(iii) the appropriate factors for FinCEN to consider when determining the specific amount of an award? Are there any additional factors that FinCEN should also consider when determining the specific amount of an award?

9. Does proposed 31 CFR 1010.930(e)(3)(iv), which states that when 30 percent of the monetary sanctions collected in any covered action or related action(s), in total, is $15 million or less, then the award payment to the whistleblower will be the maximum allowed, help to incentivize insiders and others to come forward with tips? If so, is the $15 million ceiling for invoking the rule appropriate, or is it either too high or too low? Please explain.

10. Does proposed 31 CFR 1010.930(c)(5)(iv)(A)(1) strike the appropriate balance between respecting a company's attorney-client privilege and avoiding a chilling effect on whistleblowers?

11. Is the proposed organization of the regulations clear enough for whistleblowers to be able to understand the process and the requirements without the need for expert advice and guidance? Can the proposed organization of the regulations be improved and, if so, how?

12. Is the separation of the discussion of eligibility criteria from the discussion of FinCEN's adjudication of whistleblower award applications helpful, or is the proposed organization confusing to the reader?

V. EO 14294

Section 5 of EO 14294 directs that all future notices of proposed rulemaking (NPRMs) and final rules published in the Federal Register, the violation of which may constitute criminal regulatory offenses, should include a statement identifying that the rule or proposed rule is a criminal regulatory offense and the authorizing statute.[40] EO 14294 directs agencies to draft this statement in consultation with DOJ.

EO 14294 further directs that the regulatory text of all NPRMs and final rules with criminal consequences published in the Federal Register after May 9, 2025 should explicitly state a mens rea requirement for each element of a criminal regulatory offense, accompanied by citations to the relevant provisions of the authorizing statute.

Willful violations of the proposed regulations set forth in this proposed rule may be subject to criminal penalties pursuant to 31 U.S.C. 5322 and regulations promulgated in 31 CFR Chapter X. The statutory authority for criminal liability requires a mens rea of willfulness as an element pursuant to 31 U.S.C. 5322(a) and 31 U.S.C. 5322(b). FinCEN's existing regulation, 31 CFR 1010.840, that sets out criminal penalties for violations of regulations promulgated in 31 CFR Chapter X also includes a mens rea of willfulness. In drafting this statement, FinCEN has consulted with DOJ.

[40] EO 14294, "Fighting Overcriminalization in Federal Regulations" 90 FR 20367 (issued May 9, 2025; published May 14, 2025), https://www.federalregister.gov/executive-order/14294.

VI. Regulatory Analysis

FinCEN has analyzed the proposed rule pursuant to EOs 12866, 13563, and 14192,[41] as well as the Regulatory Flexibility Act (RFA),[42] the Unfunded Mandates Reform Act (UMRA),[43] and the Paperwork Reduction Act (PRA).[44] This proposed rule is not expected to have an annual effect on the economy of $100 million or otherwise constitute a "significant regulatory action" as defined in section 3(f) of EO 12866. Accordingly, this rule would not be an EO 14192 regulatory action. Also, pursuant to the RFA, FinCEN certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Furthermore, pursuant to the UMRA, FinCEN has concluded that the proposed rule would not result in an expenditure of $193 million or more annually by state, local, and Tribal governments or by the private sector.[45]

To facilitate completion of these distinct statutorily required assessments, FinCEN conducted a broader, general analysis of the anticipated economic effects of the rule as proposed. The main findings of this analysis are presented first,[46] and are referenced as applicable in the remaining subsections of the assessment. Finally, this section concludes with additional requests for comment specific to the assessment, both as a whole and with respect to select assumptions,

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[41] *See infra* Section VI.B. for analysis required pursuant to EOs 12866 and 13563. EO 12866, *Regulatory Planning and Review*, 58 FR 51735 (Sept. 30, 1993), https://www.federalregister.gov/executive-order/12866; EO 13563, *Improving Regulation and Regulatory Review*, 76 FR 3821 (Jan. 21, 2011), https://www.govinfo.gov/content/pkg/FR-2011-01-21/pdf/2011-1385.pdf. *See also* EO 14192, *Unleashing Prosperity Through Deregulation,* 90 FR 9065 (Feb. 6, 2025) https://www.federalregister.gov/documents/2025/02/06/2025-02345/unleashing-prosperity-through-deregulation.

[42] *See infra* Section VI.C. for analysis required pursuant to the Regulatory Flexibility Act of 1980 (RFA), Public Law 96-354 (Sept. 19, 1980). 5 U.S.C. 601 *et seq*.

[43] *See infra* Section VI.D. for analysis required pursuant to the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4 (Mar. 22, 1995).

[44] *See infra* Section VI.E. for analysis required pursuant to the Paperwork Reduction Act of 1995 (PRA), Public Law 96-511 (May 22, 1995).

[45] The U.S. Bureau of Economic Analysis reports the annual value of the gross domestic product implicit price deflator for calendar year 1995 (the year UMRA was enacted) as 66.939, and as 128.974 for calendar year 2025 (the most recent available). Thus, the inflation-adjusted estimate for $100 million is 128.974 ÷ 66.939 × $100 million, or $192.7 million. *See* U.S. Bureau of Economic Analysis, Table 1.1.9. Implicit Price Deflators for Gross Domestic Product, https://apps.bea.gov/iTable/?reqid=19&step=3&isuri=1&1921=survey&1903=13#eyJhcHBpZCI6MTksInN0ZXBzIjpbMSwyLDMsM10sImRhdGEiOltbIk5JUEFfVGFibGVfTGlzdCIsIjEzIl0sWyJDYXRlZ29yaWVzIiwiU3VydmV5Il0sWyJGaXJzdF9ZZWFyIiwiMTk5NSJdLFsiTGFzdF9ZZWFyIiwiMjAyNSJdLFsiU2NhbGUiLCIwIl0sWyJTZXJpZXMiLCJBIl1dfQ==.

[46] *See infra* Section VI.A. for analysis as part of the broad economic considerations of this proposed rule and the enhancements expected to the Whistleblower Program.

analytical frameworks, methodological approaches, and inferences upon which it has relied.[47] Comments responsive to the specific questions in Sections V.E. and V.F. are invited, as are any additional data, studies, or other information that would substantively improve the accuracy or completeness of the analysis as proposed and presented below.

A. Broad Economic Considerations

In assessing the potential economic effects of the proposed rule, FinCEN has considered the underlying market failures and perceived inefficiencies that the proposed rule and resulting whistleblower program would address. The fundamental economic considerations include both the general factors that give rise to the necessity for a whistleblower program as a mechanism of market discipline and the specific structure of incentives under the currently operating program.

FinCEN appreciates that, to improve upon the status quo and thereby achieve economic benefits as a consequence of rulemaking, the proposed rule would need to offset the incremental expenditures—engendered by activities that, but for the proposed rule, would not be incurred—with equal or greater countervailing economic and social gains. On the whole, FinCEN believes that such an outcome would flow from the proposed rule being implemented but notes that such future economic effects might be difficult to identify empirically.

Due to the variety of incremental changes to the status quo that successful implementation of the proposed rule could introduce, it is challenging to assess with precision the aggregate economic effect—including the costs and benefits—of the proposed rule. However, a successful whistleblower program could increase the efficiency of investigative activity by improving the focus and efficacy of such activity. Furthermore, an increase in the observed probability that a federal investigation responsive to a whistleblower tip results in monetary sanctions could deter the types of illegal activities that could trigger whistleblowing.

1. Baseline Considerations

[47] *See infra* Section VI.F. for requests for comments related to the regulatory analysis.

To assess the anticipated regulatory impact of the proposed rule, FinCEN first established select factors about the current state of the world as it pertains to activities relevant to the proposed rule. This is consistent with established best practices that the expected economic effects of a proposed rule be measured against the status quo as a primary counterfactual. Among other factors, FinCEN's economic assessment considered the proposed rule in the context of existing regulatory requirements,[48] the primary groups likely to be affected by the rule,[49] and pertinent elements of current affected party characteristics, activities, common practices, and incentives.[50] Each of these elements is discussed in its respective subsection below.

a. Baseline of Affected Parties

FinCEN considered that a variety of persons might be considered potentially affected by the proposed rule because of the broad scope of activities regulated by the covered statutes in the proposed rule and the unique nature of certain of those statutes. As a general matter, a rule need not impose direct obligations on a person for that person to be considered part of the baseline population of potentially affected parties. Instead, baseline populations are meant to include any parties that, when considering the expected economic effects of a rule, FinCEN could reasonably anticipate will experience a change in costs (monetary or otherwise) or benefits that would result from adoption of the rule. These changes may occur due to actions taken by the parties themselves or may be experienced as a direct consequence of actions taken by others in response to the rule in question. While FinCEN acknowledges that many additional groups of persons might be indirectly affected by the rule as proposed, it considered the following three groups as those expected to experience the primary direct effects: (i) current and potential whistleblowers;

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[48] *See infra* Section VI.A.1.b. for an overview of the economic analysis of the proposed rule in the context of existing regulatory requirements.
[49] *See infra* Section VI.A.1.a. for the economic analysis on the primary groups likely to be affected by the proposed rule.
[50] *See infra* Sections VI.A.1.b. and c. for the economic analysis on the characteristics, activities, and common practices of current affected parties.

(ii) potential subjects of Form TCR; and (iii) the government departments and agencies that would receive information from Form TCR submissions.

i. Current and Potential Whistleblowers

One of the primary parties FinCEN expects the proposed rule to affect is the population of current and future whistleblowers who submit tips to FinCEN. As discussed above and below, FinCEN intends for the proposed rule, the Whistleblower Program, and the proposed reporting mechanisms, including Forms TCR and WB-APP, to benefit these affected parties by reducing the costs and risks of reporting potential violations and ensuring maximum levels of private benefits to doing so in cases where whistleblower information or analysis contributes to investigation or enforcement activities that, at minimum, would not otherwise have been undertaken with the same success absent greater costs or other difficulty. Based on an analysis of original tips submitted in calendar years 2021 through 2024, FinCEN receives approximately eighty-seven (87) original submissions of whistleblower tips per year on average,[51] from which this assessment infers that there have been as many as eighty-seven (87) unique whistleblowers per year on average. Because these numbers represent an estimate of the population of whistleblowers based on data from a historical period before the enhancements to the program envisioned by the proposed rule take effect, FinCEN anticipates that the total population would increase in light of the increased benefits and efficiencies of the Whistleblower Program as proposed, potentially doubling (or more) within a short period following the effective date of a final rule.[52]

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[51] *See infra* Table 3 (which describes tip submissions and applications for awards by calendar year of receipt). Because 2021 was the first year following the enactment of the AML Act, which effectively led to the initial submission of whistleblower tips, an average number of tips including that year may be materially lower than the actual number of original tips expected to be received in years subsequent to the effective date of the final rule for which this proposal is being made.

[52] *See infra* Table 3 and Section VI.E.1. on the historical tip volumes and the estimated number of annual responses forecast after the enhancements to the program envisioned by the proposed rule take effect.

ii. Potential Subjects of Form TCR

The proposed rule is intended to facilitate whistleblower reporting of possible violations of a covered statute.[53] Accordingly, entities with obligations under those covered statutes—entities that could therefore theoretically become subjects of a Form TCR—constitute a second group of parties that could potentially be affected by the proposed rule. However, FinCEN does not expect that all such potentially affected parties would actually be directly affected by this whistleblower rule, as proposed. Instead, FinCEN would only consider a potential subject of a Form TCR to be an affected party if the potential subject were to undertake new activities that it would not have undertaken if the rule had not gone into effect (for example, because the potential subject perceived a heightened probability either of being reported to the federal government for potential violations, or of having such matters brought to its attention by employees motivated by the rule). Without such a perceived change, there would be no reason to expect the potential subject to undertake any novel activities involving quantifiable expenditures. In addition, for a potentially affected party to be considered an actual affected party for this rule, the activities would need to be motivated by this rule and not, for example, by existing incentives applicable to the party pursuant to the whistleblower programs administered by other agencies, as explained below in the *Regulatory Baseline*. Bearing in mind these challenges, which are inherent to estimating the size of the actually affected population relative to the potentially affected population, FinCEN considers the actual affected population to be a very small portion of the potentially affected population.

Given the range and size of the industries from which eligible whistleblowers might emerge, the population of potentially affected parties is quite large, although FinCEN reiterates its belief that the actual affected population will be a very small portion of the total. Table 1 and Table 2 present FinCEN's estimates of the primary populations of covered financial institutions under the BSA and select industry populations that could potentially be subjects of Form TCRs

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[53] *See supra* Section II.B. for a description of the covered statutes.

relating to alleged violations of the BSA, IEEPA, TWEA, and the Kingpin Act,[54] respectively. To reduce the likelihood of double-counting potentially affected parties, FinCEN attempted to exclude certain categories of entities from the count in one population table if they were already included in the other population table. This presentation is not intended to imply that parties listed in one table but not the other have possible obligations only under one type of covered statute. Certain potentially affected entities may engage in a number of activities that could violate different covered statutes. Alternatively, certain potentially affected entities may engage in one activity that could violate more than one covered statute within the scope of the proposed Whistleblower Program. Because of the concern that double-counting would lead to an overestimate of the population of potentially affected parties, FinCEN attempted to de-duplicate entity categories between the baseline populations tables; however, in some cases de-duplication was not practicable.[55]

Table 1 presents an estimate of the primary population of entities subject to FinCEN regulations implementing the BSA.

Table 1. Financial Institutions under the BSA

Financial Institution Type[a]	Number of Financial Institutions
Banks with a Federal Functional Regulator[b]	8,791[c]
Banks without a Federal Functional Regulator[d]	365[e]
Casinos or Card Clubs[f]	1,299[g]
Principal Money Services Businesses (MSBs)[h]	25,312[i]
Agent MSBs	229,161
Broker-Dealers[j]	3,278[k]
Mutual Funds[l]	1,324[m]
Insurance Companies[n]	717[o]
Futures Commission Merchants (FCMs) and Introducing Brokers in Commodities (IBCs)[p]	954[q]
Dealers in Precious Metals, Stones, and Jewels[r]	6,742[s]

[54] The organization of primary industry categories as presented in Table 2 reflect the options from which individuals may select in the proposed Form TCR, which asks the whistleblower to describe the type of industry to which the tip relates to, if the whistleblower selected to describe the nature of the tip as a violation of or evasion of U.S. economic sanctions.

[55] Where de-duplication was not practicable across categories within the same table, this data issue is identified in a corresponding table endnote. Additionally, certain entities may be double counted across the two tables, including certain health insurance companies and virtual asset service providers (VASPs) that, because of a lack of comparability in the underlying sources of the original data used, could not be de-duplicated.

Operators of Credit Card Systems[t]	4[u]
Loan or Finance Companies[v]	13,342[w]
Housing Government Sponsored Enterprises (GSEs)[x]	13[y]
Total	**291,302**

[a] *See* 31 U.S.C. 5312(a)(2); *see also* 31 CFR 1010.100(t) (definition of financial institution).

[b] *See* 31 CFR 1010.100(t)(1); *see also* 31 CFR 1010.100(d) and 31 CFR 1020.210(a).

[c] This includes 4,336 Federal Deposit Insurance Corporation-insured depository institutions (*i.e.*, federally regulated banks) according to the Federal Deposit Insurance Corporation's quarterly data summary for Q4 2025, p. 4 (https://www.fdic.gov/quarterly-banking-profile/past-quarterly-banking-profiles). It also includes 4,455 National Credit Union Administration-chartered credit unions (*i.e.*, federally regulated credit unions) according to National Credit Union Administration's quarterly credit union data summary for Q4 2024 (https://ncua.gov/analysis/credit-union-corporate-call-report-data/quarterly-data-summary-reports).

[d] *See* 31 CFR 1020.210(b).

[e] The Board of Governors of the Federal Reserve System Master Account and Services Database (https://www.federalreserve.gov/paymentsystems/master-account-and-services-database-existing-access.htm) contains data as of November 30, 2025, on financial institutions that use Federal Reserve Bank financial services, including those with no additional Federal regulator. FinCEN used this data to identify 365 banks and credit unions with no additional Federal regulator using Federal Reserve Bank financial services.

[f] *See* 31 U.S.C. 5312(a)(2)(X); *see also* 31 CFR 1010.100(t)(5)-(6).

[g] From the American Gaming Association "State of the States 2025: The AGA Analysis of the Commercial Casino Industry," May 2025, p. 14 (https://www.americangaming.org/wp-content/uploads/2025/05/AGA-State-of-the-States-2025.pdf).

[h] *See* 31 U.S.C. 5312(a)(2)(J,K,R); *see also* 31 CFR 1010.100(t)(3) and 31 CFR 1010.100(ff) (definition of MSB).

[i] The definition of MSB (31 CFR 1010.100(ff)) covers both principal and agent MSBs. FinCEN estimated there were 25,312 uniquely identifiable registered principal MSBs with indications of ongoing operations as of the 3 year-ends 2023–2025. FinCEN has estimated that the number of agent MSBs is approximately 229,161 (see 90 FR 47126 (Sept. 30, 2025)).

[j] *See* 31 U.S.C. 5312(a)(2)(G); *see also* 31 CFR 1010.100(t)(2).

[k] This estimate is based on SEC data on active broker-dealers available at "Company Information About Active Broker-Dealers" (https://www.sec.gov/foia-services/frequently-requested-documents/company-information-about-active-broker-dealers), which listed 3,278 active broker-dealers registered with the SEC as of December 31, 2025.

[l] *See* 31 U.S.C. 5312(a)(2)(I); *see also* 31 CFR 1010.100(t)(10).

[m] Based on SEC's Form N-CEN data from Q1 through Q4 of 2025, 1,324 unique, registered open-end investment companies reported on Form N-CEN in 2025 (https://www.sec.gov/dera/data/form-ncen-data-sets).

[n] *See* 31 U.S.C. 5312(a)(2)(M); *see also* 31 CFR 1025.100(g) (definition of "insurance company or insurer" for purposes of applicability of FinCEN regulations).

[o] This estimate includes 717 life and health insurers in the United States during 2024. From U.S. Treasury ''Annual Report on the Insurance Industry,'' (Sept. 2025), p. 10 (https://home.treasury.gov/system/files/311/Final%20FIO%202025%20Annual%20Report.pdf). Neither the estimate presented here nor the estimate of broker-dealers controls for entities that may be both a broker-dealer and an insurance company; thus, a certain number of affected entities may be double-counted. However, based on consultation with staff of other Federal regulators, FinCEN believes this population of dually affected entities may be relatively small and unlikely to significantly distort the overall assessment.

[p] *See* 31 U.S.C. 5312(a)(2)(H); *see also* 31 CFR 1010.100(t)(8-9).

[q] According to Commodity Futures Trading Commission (CFTC) data on FCMs available at "Financial Data for FCMs" (https://www.cftc.gov/MarketReports/financialfcmdata/index.htm), there were 66 registered FCMs as of December 31, 2025. The number of IBCs as of December 31, 2025 (888) was obtained from the NFA "NFA Membership and Registration" website (https://www.nfa.futures.org/registration-membership/membership-and-directories.html). Because deduplication of entities registered as both FCMs and IBCs was not feasible, this estimate may double-count some entities registered in both categories. FinCEN, however, believes this subpopulation may be small.

[r] *See* 31 U.S.C. 5312(a)(2)(N) (definition of a "dealer" in precious metals, stones, or jewels for purposes of applicability of FinCEN regulations); *see also* 31 CFR 1027.100(b).

[s] This estimate is based on data on firms with North American Industry Classification System (NAICS) code 423940 (Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers) in the 2022 Statistics of U.S. Businesses ("2022 SUSB Data") accessed March 1, 2025 (https://www.census.gov/data/tables/2022/econ/susb/2022-susb-annual.html). It does not include Jewelry and Silverware Manufacturing (NAICS code 33991) or Jewelry Retailers (NAICS code 44831).

[t] *See* 31 U.S.C. 5312(a)(2)(L) (definition of "operator of a credit card system" for purposes of applicability of FinCEN regulations); *see also* 31 CFR 1028.100(e).

[u] This value is based on FinCEN review of active, U.S.-based market participants at year-end 2025.

[v] *See* 31 U.S.C. 5312(a)(2)(P) (definition of "loan or finance company"); *see also* 31 CFR 1010.100(lll).

[w] This estimate is based on 2022 SUSB Data on firms with NAICS codes 522292 (Real Estate Credit) and 522310 (Mortgage and Non-Mortgage Loan Brokers).

[x] *See* 31 CFR 1010.100(mmm) (definition of "housing government sponsored enterprise").

[y] Data on the 11 regional Federal home loan banks were obtained from the Federal Housing Finance Agency (https://www.fhfa.gov/supervision/federal-home-loan-bank-system/about). Housing GSEs are U.S. Government-sponsored enterprises and additionally include Fannie Mae and Freddie Mac.

Table 2 presents population estimates of select entities with obligations under IEEPA, TWEA, and the Kingpin Act that could thereby potentially become the subject of a Form TCR if suspected of a violation by a whistleblower. Industries presented in Table 2 are for illustrative purposes only. This table does not, and is not intended to, represent the full scope of entities that could become the subject of a Form TCR under IEEPA, TWEA, or the Kingpin Act; rather, it is presented only to highlight the size of the populations of the categories that are set forth in the proposed Form TCR.[56] Inclusion in this table, as in the proposed Form TCR, does not imply that a category of business is expected to be the subject of a TCR more frequently than other categories.

Table 2. Select other Potential Subjects of TCRs

Industries[a]	Number of Entities
Agriculture[b]	22,599
Aviation[c]	4,395
Construction[d]	782,487
Crypto/Digital Assets[e]	2,000
Defense (Military Vehicles and Aerospace)[f]	1,401
Education and University[g]	2,494
Energy (Oil & Gas, and Electrical)[h]	5,371
Healthcare (Hospitals and Health Insurance) and Pharmaceuticals[i]	3,136
Humanitarian & NGO[j]	299,103

[56] The proposed Form TCR provides individuals the opportunity to write in the subject's industry if that industry is not otherwise listed in the proposed Form TCR. This table excludes that write in option. *See* Appendix A for proposed Form TCR.

Investment Advisers Registered with the SEC[k]	14,914
Investment Advisers Not Registered with the SEC[l]	5,546
Lobbying (Public Relations)[m]	8,157
Other Manufacturing[n]	235,065
Mining[o]	3,523
Shipping & Logistics (Air, Sea, Land)[p]	161,147
Small Arms[q]	494
Software and Data Processing[r]	25,156
Telecommunications[s]	12,086
Tourism[t]	154,672
Transportation[u]	49,815
Total	**1,793,561**

[a] Unless otherwise noted, the estimated number of entities per industry is based on the number of firms with the corresponding, indicated NAICS code as reported in the 2022 SUSB Data, https://www.census.gov/data/tables/2022/econ/susb/2022-susb-annual.html.

[b] Based on SUSB 2022 data counting entities with leading two-digit NAICS code 11 (Agriculture, Forestry, Fishing, and Hunting Sector), this estimate is intended to correspond to the entities contemplated by Form TCR #43.a. *See* Appendix A for proposed Form TCR.

[c] Based on SUSB 2022 data counting entities with leading four-digit NAICS code 4881 (Support Activities for Air Transportation), this estimate is intended to correspond to the entities contemplated by Form TCR, excluding overlap with air transportation activities included in "Shipping and Logistics". *See* note p; *see also* Appendix A for proposed Form TCR, question 43.

[d] Based on SUSB 2022 data counting entities with leading two-digit NAICS code 23 (Construction), this estimate is intended to correspond to the entities contemplated by the proposed Form TCR. *See* Appendix A for proposed Form TCR.

[e] This estimate is meant to correspond to the industries contemplated by Form TCR. It is informed by data from states that currently register virtual asset service providers (VASPs) through the NMLS system (New York and Louisiana), which reported 54 VASPs, combined, and FINTRAC data from Canada (where registration is mandatory), which includes 88 VASPs based in 22 additional U.S. states and territories. It is also informed by Canada's total population of approximately 2,500 VASPs registered with FINTRAC as of June 2025. FinCEN's estimates assume the total U.S. figure would be similar.

[f] Based on SUSB 2022 data counting entities with NAICS code 336992 (Military Armored Vehicle, Tank, and Tank Component Manufacturing) (n=57) and entities with leading four-digit NAICS code 3364 (Aerospace Product and Parts Manufacturing) (n=1,344), this estimate is intended to correspond to the entities contemplated by the proposed Form TCR. *See* Appendix A for proposed Form TCR.

[g] Based on SUSB 2022 data counting entities with leading four-digit NAICS code 6113 (Colleges, Universities, and Professional Schools), this estimate is intended to correspond to the entities contemplated by the proposed Form TCR #43.g. *See* Appendix A for proposed Form TCR.

[h] Based on SUSB 2022 data counting entities with leading three-digit NAICS code 211 (Oil and Gas Extraction) (n=4,213) and entities with NAICS codes 22111 (Electric Power Generation) (n=1,158), this estimate is intended to correspond to the entities contemplated by Form TCR #43.h. *See* Appendix A for proposed Form TCR, question 43.

[i] Based on SUSB 2022 data counting entities with leading three-digit NAICS code 622 (Hospitals) (n=3,136), entities with NAICS codes 524114 (Direct Health and Medical Insurance Carriers) (n=1,071), and entities with leading four-digit NAICS codes 3254 (Pharmaceutical and Medicine Manufacturing) (n=2,305), this estimate is intended to correspond to the entities contemplated by the proposed Form TCR. *See* Appendix A proposed Form TCR, question 43.

[j] Based on SUSB 2022 data counting entities with leading three-digit NAICS code 813 (Religious, Grantmaking, Civic, Professional, and Similar Organizations), this estimate is intended to correspond to the entities contemplated by the proposed Form TCR. *See* Appendix A for proposed Form TCR.

[k] This figure includes Registered Investment Advisers as estimated based on all registered advisers with at least one client based on Item 5.D of Form ADV, as of Oct. 5, 2023. This estimate is intended to correspond to the entities contemplated by the proposed Form TCR. *See* Appendix A for proposed Form TCR.

[l] This figure includes Exempt Reporting Advisers (ERAs). The number of ERAs is estimated based on all registered advisers with at least one client based on Item 5.D of Form ADV, as of Oct. 5, 2023. This estimate is

intended to correspond to the entities contemplated by the proposed Form TCR. *See* Appendix A for proposed Form TCR.

[m] Based on SUSB 2022 data counting entities with five-digit NAICS code 54182 (Public Relations Agencies), this estimate is intended to correspond to the entities contemplated by the proposed Form TCR. *See* Appendix A for proposed Form TCR.

[n] Based on SUSB 2022 data counting entities with leading two-digit NAICS codes 31-33 (Manufacturing), this estimate excludes Pharmaceutical and Medicine Manufacturing; Small Arms, Ordnance, and Ordnance Accessories Manufacturing; Military Armored Vehicle, Tank, and Tank Component Manufacturing; and Aerospace Product and Parts Manufacturing, which are already included elsewhere in the table, and is intended to correspond to the entities contemplated by the proposed Form TCR. *See* Appendix A for proposed Form TCR.

[o] Based on SUSB 2022 data counting entities with leading three-digit NAICS code 212 (Mining, except oil & gas), this estimate is intended to correspond to the entities contemplated by the proposed Form TCR.

[p] Based on SUSB 2022 data on entities with leading three-digit NAICS codes 481, 483, 484 (Air Transportation, Water Transportation, Truck Transportation), this estimate is intended to correspond to the entities contemplated by the proposed Form TCR. *See* Appendix A for proposed Form TCR.

[q] Based on data on entities with NAICS code 332994 (Small Arms, Ordnance, and Ordnance Accessories Manufacturing), this estimate is intended to correspond to the entities contemplated by the proposed Form TCR. *See* Appendix A for proposed Form TCR.

[r] Based on data on entities with leading four-digit NAICS codes 5112 (Software Publishers) and leading three-digit NAICS code 518 (Data Processing, Hosting, and Related Services), this estimate is intended to correspond to the entities contemplated by the proposed Form TCR. *See* Appendix A for proposed Form TCR.

[s] Based on data counting entities with leading three-digit NAICS code 517 (Telecommunications), this estimate is intended to correspond to the entities contemplated by the proposed Form TCR #43.t. *See* Appendix A for proposed Form TCR.

[t] Based on SUSB 2022 data for entities with leading three-digit NAICS codes 487, 712, 713, 721 (excluding 7213) and leading four-digit NAICS code 5615 (Scenic and Sightseeing Transportation; Travel Arrangement and Reservation Services; Amusement, Gambling, and Recreation; Accommodations (excluding Rooming and Boarding Houses, Dormitories, and Workers' Camps); and Museums, Historical Sites, and Similar Institutions), this estimate is intended to correspond to the entities contemplated by the proposed Form TCR. *See* Appendix A for proposed Form TCR.

[u] Based on SUSB 2022 data for entities with leading three-digit NAICS codes 485 and 488 (excluding 4881) (Transit and Ground Passenger Transportation; Support Activities for Transportation (excluding Support Activities for Air Transportation)), this estimate is intended to correspond to the entities contemplated by the proposed Form TCR. *See* Appendix A for proposed Form TCR.

Because the industries and populations in Table 1 and Table 2 present a non-exhaustive list of industries and persons that are potentially subjects of a Form TCR, the total population of potential subjects may be considerably larger than the approximately 2 million entities estimated in the two tables. While the total population of entities that are potential subjects of a Form TCR for possible violations of the BSA is generally limited to financial institutions covered by 31 CFR chapter X (see Table 1),[57] the affected populations under IEEPA, TWEA, and the Kingpin Act have no such limits. And while many of the primary potentially affected parties under these

[57] Table 1 does not include population estimates for certain groups that, depending on facts and circumstances, might also have obligations under the BSA. These groups include, for example, persons involved in real estate closings and settlements; pawnbrokers; travel agencies; and businesses engaged in vehicle sales, including automobile, airplane, and boat sales, among others. Some of these groups are likely to be included in the count of other affected parties in Table 2, while others may not be represented in the tabulated estimates. FinCEN's analysis has considered the potential economic costs to these, and other untabulated parties discussed elsewhere in Section VI.A.1.a.ii, with equal weight in its assessment of the benefits and costs of the proposed rule.

three statutes may be included in the population counts in Table 2, many other potentially affected parties under these statutes remain untabulated because quantification of any meaningful reliability was not practicable. FinCEN has instead qualitatively identified these additional potentially affected entities in the respective discussions below, grouped by particular programs under IEEPA, TWEA, and the Kingpin Act.

In general, U.S. economic and trade sanctions under these three statutes apply to all persons under U.S. jurisdiction, including all U.S. citizens and permanent residents regardless of where they are located, all individuals and entities within the United States, and all U.S. incorporated entities and their foreign branches. Such persons are prohibited from transactions involving specific persons (including those on OFAC's Specially Designated Nationals and Blocked Persons List, or OFAC's SDN List), or involving specific regions or countries, or related to particular sectors of a country's economy, unless authorized by OFAC or exempted by applicable legal authority. Non-U.S. persons are also subject to certain sanctions. For example, non-U.S. persons are prohibited from causing or conspiring to cause U.S. persons to violate U.S. sanctions, as well as engaging in conduct that evades U.S. sanctions. Certain programs also require foreign persons reexporting certain goods, technology, or services from the United States to comply with U.S. sanctions, even if no U.S. persons are involved in the reexport.

Additionally, certain entities or persons may currently be covered by specific IEEPA programs, such as the Data Security Program or the Outbound Investment Security Program.[58] The Data Security Program applies to U.S. persons, including citizens, lawful permanent residents, and U.S. organized entities, which are prohibited from engaging in certain data transactions that could result in access to bulk sensitive personal data by foreign adversaries with countries of concern.[59] It also encompasses covered persons, which refers to individuals or entities that are

[58] *See supra* note 19 (discussing the impact of the COINS Act on the future applicability of FinCEN's whistleblower program on the Outbound Investment Security Program).
[59] *See* 28 CFR 202.256 (describing requirements pursuant to EO 14117 where U.S. persons are prohibited from engaging in certain data transactions that could result in access to bulk sensitive personal data by foreign adversaries with countries of concern); *see supra* note 20 describing EO 14117.

owned or controlled by, or subject to the jurisdiction of a country of concern.[60] Data brokers, technology vendors, and other third parties that conduct covered data transactions involving access by a country of concern or covered person to any government-related data or bulk U.S. sensitive personal data, are subject to enforcement under the Data Security Program.

The Outbound Investment Security Program applies primarily to U.S. persons, including citizens, lawful permanent residents, and U.S. organized entities, which are subject to restrictions on certain investments involving national security technologies, including but not limited to semiconductors, quantum computing, and artificial intelligence in countries of concern.[61] It also applies to covered foreign persons, which include a person of a country of concern that engages in a covered activity in the above mentioned national security technologies, or a person who directly or indirectly holds a board seat, a voting or equity interest, or any contractual power to direct or cause the direction of management of an entity to engage in a covered activity that also meets certain financial criteria.[62] The Outbound Investment Security Program also applies to controlled foreign entities of U.S. persons that are incorporated in or otherwise organized under the laws of a country other than the United States, and all U.S. persons must ensure their compliance with the rule's prohibitions and notification requirements.[63] Additionally, it reaches indirect participants, including individuals or entities that facilitate or cause a prohibited transaction, even through intermediaries or layered investments.[64]

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[60] *Id.* at 202.211 (describing covered persons subject to bulk sensitive personal data prohibitions in EO 14117); *see supra* note 20 describing EO 14117.
[61] 31 CFR 850.101 (describing scope of requirements pursuant to EO 14105 with respect to requirements of U.S. persons to provide notification of information relative to certain transactions involving covered foreign persons and that prohibit U.S. persons from engaging in certain other transactions involving covered foreign persons); *see supra* note 19 for a description of EO 14105.
[62] *Id.* at 850.209 (defining "covered foreign person" pursuant to EO 14105); *see also id.* 850.217 (defining "notifiable transaction" pursuant to EO 14105; 850.224 enumerating notifiable and prohibited transactions under covered activities pursuant to EO 14105); *see supra* note 19 (for a description of EO 14105).
[63] *Id.* at 850.101(c) (describing regulations implementing EO 14105 to identify categories of covered transactions that are notifiable transactions); *see also id.,* at 850.206 (defining "controlled foreign entity" pursuant to EO 14105); *supra* note 19 (for a description of EO 14105).
[64] *Id.* at 850.210, note 1 to 850.210 (defining "covered transaction" pursuant to EO 14105); *see also supra* note 19 (for a description of EO 14105).

iii. Government Departments and Agencies

The primary government departments and agencies expected to be affected by the proposed rule are Treasury and DOJ.[65] As discussed below,[66] FinCEN is proposing this rule, which proposes to establish the Whistleblower Program, with a view toward enhancing the efficiency with which these agencies conduct their investigative and enforcement related work.[67] A brief description of select current activities undertaken by these parties in connection with alleged violations of the covered statutes in the absence of the proposed rule is included below.[68]

b. Regulatory Baseline

FinCEN has evaluated the economic effects of the proposed rule, which would structure and operationalize a Whistleblower Program, including how the proposed rule would differ from current statutory requirements and current practices. The regulatory baseline, against which the economic effects of the proposed rule are considered, includes the statutory framework for 31 U.S.C. 5323 as set forth in section 6314 of the AML Act and the AML Whistleblower Improvement Act, which were enacted into law as part of the NDAA and the Consolidated Appropriations Act, 2023, respectively.[69]

The regulatory baseline also includes the statutes, regulations, orders, and programs that potential subjects of future Form TCRs have obligations under, as encompassed by the "covered statutes" defined in the proposed rule.[70] Requirements and obligations under the covered statutes

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[65] Pursuant to the statute and proposed rule, under certain circumstances, FinCEN would also make original information available to appropriate agencies and authorities other than Treasury and Justice, as FinCEN deems appropriate. This would include other appropriate Federal agencies that have the authority to successfully enforce related actions that, like covered actions, could result in the imposition of monetary sanctions. This might include, for example, the U.S. Department of Commerce's Bureau of Industry and Security, which is responsible for enforcing export controls.

[66] *See infra* Section VI.A.2.a. (discussing the anticipated benefits of the proposed rule).

[67] *See infra* Section VI.A.1.c.iii. (discussing the baseline of current practices and activities by affected government departments and agencies).

[68] *See infra* Sections VI.A.1.c.ii. and iii. (discussing market practices and activities by parties expected to be affected including, but not limited to, whistleblowers and their legal representatives, potential subjects of Form TCRs, and Federal departments and agencies).

[69] As discussed below, the AML Whistleblower Improvement Act established the "Financial Integrity Fund," which is a revolving fund used to pay whistleblower awards. 31 U.S.C. 5323(b)(2)-(3).

[70] *See supra* Sections II.B. (for an overview of covered statutes); Sections III.C.2.a. and b. for regulatory definitions of "covered actions" and "related actions" that describe the statutes, regulations, orders, and programs under which potential subjects of future Form TCRs may have statutory and regulatory obligations).

exist independently of the proposed rule and status quo prior to the issuance of any final rule. There is no reason to expect that these would change as a direct consequence of establishing the Whistleblower Program, as proposed in this notice. For purposes of assessing the expected economic effects of the proposed rule, FinCEN excluded from its analysis any anticipated changes in affected party behavior that would arise from necessary compliance activities newly undertaken with respect to these covered statutes as well as any anticipated changes in activities that might arise from changes to covered statutes that would reasonably be expected to occur independently of the proposed rule.

c. Baseline of Current Practices and Activities

FinCEN took certain aspects of the current activities and practices of parties expected to be affected by the proposed rule into consideration when forming expectations about its anticipated economic effects. Among other things, FinCEN considered trends in the submission of tips by whistleblowers, other activities by whistleblowers and the potential subjects of Form TCR, and select characteristics of investigative and enforcement activities undertaken by Treasury and DOJ related to covered statutes under the proposed rule.

i. Current FinCEN Whistleblower Practices

As noted above, the statutory framework under which FinCEN has received tips from whistleblowers was promulgated in 2020 and enhanced in 2021.[71] Between the first and second year in which FinCEN received tips, the number of original tips received increased more than sixfold, then nearly doubled again in the subsequent year.

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[71] *See supra* Section II.A. (describing the Whistleblower Program's statutory framework under the AML Act and the AML Whistleblower Improvement Act); *see also supra* Section VI.A.1.b. (describing the regulatory baseline, which includes the statutes, regulations, orders, and programs that potential subjects of future Form TCRs have obligations under, as encompassed by the "covered statutes" defined under the proposed rule); *see also infra* Section VI.A.1.c. ii. (describing the statutory and regulatory violations involving potential subjects of Form TCR). As described in Section II, the AML Act amended 31 U.S.C. 5323 by replacing the whistleblower provisions in that section with enhanced award provisions and protections. Prior to the enactment of the AML Act, the whistleblower provisions of the BSA generated only *de minimis* whistleblower activity, and thus, FinCEN is not factoring that pre-AML Act activity into the baseline of current practices and activities.

Table 3 presents time series data and forecasts of tips received by FinCEN[72] in the first five years of operation, including both original and supplemental submissions as well as applications for awards in the years following initial tip submissions in which cases associated with previously reported matters were resolved.

Table 3. Tip Submissions and Applications for Awards by Year of Receipt

Calendar Year	Total Tips per Year		Number of applications for an award received
	New Tips	Supplemental Tips	
2021	13		0
	12	1	
2022	101		0
	74	27	
2023	246		3
	143	103	
2024	203		5
	116	87	
2025[a]	208		4
	120	88	
Total[b]	771		12
	465	306	

[a] Projected annual values are based on observed values for Q1 as of March 31, 2025, and the average values for the corresponding remaining quarters using 2023 and 2024 data.
[b] Totals include both observed values for calendar years 2021-2024 and projected values for 2025.

Table 4 presents the same data and related forecasts organized by the lifecycle subsequent to the year in which each original tip was received. This data indicates that, on average, approximately sixty-one (61) percent of tips submitted are subsequently supplemented, and that each tip that is subsequently supplemented is, on average, supplemented twice. Additionally, it appears that over the period in which cases were resolved that could have been informed by whistleblower tips, the individuals who submitted approximately three (3) percent of original tips later submitted an application for an award.

Table 4. Submissions to FinCEN over the Form TCR Lifecyle from 2021-2025[a]

[72] Tips received by FinCEN include both those directly submitted to FinCEN and those shared by other government departments or agencies with FinCEN because of a potential nexus with FinCEN's covered statutes and implementing regulations.

Year of Original Form TCR filing	Original Form TCRs Submitted	Original Form TCRs subsequently supplemented	Supplemental Form TCRs filed	Average Supplemental Form TCRs per supplemented TCR	Number of award applications later filed in association with Original Form TCRs
2021	12	8.3%	1	0.08	0.00%
2022	74	36.5%	27	2.08	0.00%
2023	143	72.0%	103	1.87	2.10%
2024	116	46.0%	87	2.18	4.30%
2025[a]	135	54.2%	73	3.52	3.20%
Total[b]	480	60.7%	291	1.95	1.92%

[a] Projected annual values are based on observed values for Q1 as of March 31, 2025, and the average values for the corresponding remaining quarters using 2023 and 2024 data.

[b] Totals include both observed values for calendar years 2021-2024 and projected values for 2025.

ii. Other Current Market Practices and Activities

Whistleblowers and Their Legal Representatives

In the absence of detailed studies of employees of potential subjects of Form TCR or other persons who become whistleblowers, FinCEN has conceived of the whistleblower population as a cross-section of the total population of individuals employed by potential subjects of Form TCR. This cross-section includes individuals of all levels of sophistication. Crucially, it includes both individuals able and willing to perform all necessary tasks, including filing all necessary forms, associated with being a whistleblower under the proposed rule, and individuals who consider themselves unable to do so without assistance or who prefer to engage professional help even if they consider such an engagement not strictly necessary.

FinCEN is aware that a relatively specialized part of the community of attorneys in the United States is available to provide such assistance to whistleblowers under all types of whistleblower programs, and that it regularly does so.[73] FinCEN expects that such attorneys will make themselves available to assist whistleblowers under the program that would be created by the proposed rule. FinCEN has therefore divided the whistleblower population into those who act alone and those who choose to engage counsel (although FinCEN has had to make

[73] *See, e.g.,* Alexander I. Platt, *The Whistleblower Industrial Complex*, Yale Journal on Regulation 40:688 (2023), *at* 695.

assumptions about the relative size of the two groups). The division has carried over into calculation of the burden associated with the various elements of acting as a whistleblower, requiring consideration of the burden of an activity when undertaken by a whistleblower acting alone, and the burden of the same activity when undertaken by legal counsel on behalf of a whistleblower. When assessing the economic burden of the latter type of activity, FinCEN has used an aggregate measure of the financial cost of billed attorney time as a proxy for the economic burden of legal representation. Although FinCEN is aware that attorneys representing whistleblowers routinely provide representation on a contingent fee basis and may indeed be required to do so by applicable state bar ethics rules, FinCEN is nonetheless considering burden in terms of overall costs to the economy. FinCEN is therefore taking into account both the ultimately successful legal representation that is compensated by a percentage of the award obtained by a whistleblower and the ultimately unsuccessful legal representation that is not compensated at all. FinCEN assumes that the continuing existence of attorneys that specialize in representing whistleblowers means that, overall, successful legal representation adequately compensates such attorneys for the resources expended on both successful and unsuccessful representation. FinCEN also assumes that the aggregate cost of billed attorney time is a good initial measure of adequate compensation. FinCEN welcomes comments that can sharpen the analysis and calculation of this aspect of the burden associated with the proposed rule.

Potential Subjects of Form TCR

Businesses subject to the covered statutes may already be affected by a number of incentives to take action to ensure compliance with the covered statutes, including by implementing internal audit and compliance programs. The number and range of these incentives, which can be organized into two categories, voluntarily self-disclosure incentives and already extant whistleblower programs, is significant.

Voluntary Self-Disclosure Incentives

The components at Treasury and Justice that enforce the covered statutes have policies that incentivize companies to voluntarily self-disclose violations of those statutes. For example, Justice's Criminal Division has a Corporate Enforcement and Voluntary Self-Disclosure Policy (CEP) that incentivizes companies to voluntarily self-disclose misconduct, fully cooperate with the Criminal Division's investigations, and timely and appropriately remediate the misconduct.[74] The potential benefits include a declination (*i.e.*, a decision by the Criminal Division that it will not prosecute a company), non-prosecution agreement, and other resolutions that may include substantially reduced monetary penalties among other benefits. In 2025, the Criminal Division further incentivized companies by revising the CEP and clarifying that additional benefits are available to companies that self-disclose and cooperate.[75] In connection with the release of the revised CEP, the Head of the Criminal Division announced: "This is the time for companies to self-report. It is the time to do the work, come in early, cooperate, and remediate. The Criminal Division's policies give clear benefits to those who do."[76]

Justice's National Security Division similarly incentivizes companies to voluntarily self-disclose all potentially criminal violations of the U.S. government's primary export control and sanctions regimes.[77] The policy generally provides that, absent (one of several) aggravating circumstances, the National Security Division will not seek to prosecute or assess a fine for companies that: voluntarily self-disclose potential criminal violations of U.S. export controls or sanctions laws; fully cooperate; and timely and appropriately remediate the issues ("NSD VSD Policy"). In 2024, the policy was revised to also include new potential safe harbor for acquirers in the mergers and acquisitions context addressing national security violations (the "M&A Policy"). Specifically, when a company undertakes a lawful, *bona fide* acquisition of another

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[74] *See* DOJ, *Justice Manual* § 9-47.120 – Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy (2025), https://www.justice.gov/jm/jm-9-47000-foreign-corrupt-practices-act-1977#9-47.120.
[75] DOJ Press Release, *Head of Justice Department's Criminal Division Matthew R. Galeotti Delivers Remarks at American Conference Institute Conference* (June 10, 2025), https://www.justice.gov/opa/speech/head-justice-departments-criminal-division-matthew-r-galeotti-delivers-remarks-american.
[76] *Id.*
[77] *See* DOJ, *Justice Manual* § 9-90.625 – Export Control and Sanctions Enforcement Policy for Business Organizations (2025), https://www.justice.gov/jm/jm-9-90000-national-security#9-90.625.

company and, through due diligence conducted either shortly before or shortly after the transaction, becomes aware of potential criminal violations of export control, sanctions, or other laws affecting U.S. national security by the acquired company, the acquiror may qualify for the additional protections of the M&A Policy by making a voluntary self-disclosure to NSD subject to the requirements of the M&A Policy.[78]

OFAC encourages anyone who may have violated OFAC-administered sanctions programs, or anyone who is aware of potential violations, to disclose the apparent or potential violation to OFAC. Voluntary self-disclosure to OFAC is considered a mitigating factor by OFAC in enforcement actions, and pursuant to OFAC's Economic Sanctions Enforcement Guidelines[79] will result in a reduction in the base amount of any proposed civil penalty.[80]

The Outbound Investment Security Program EO also provides a process for a U.S. person to submit a voluntary self-disclosure if they believed their conduct may have resulted in a violation of any part of the rule.[81] Such disclosure would be taken into account as a mitigating factor in determining the appropriate response, including the potential imposition of penalties, if OIS determines that there was, in fact, a violation.

Whistleblower Programs

In addition to voluntary self-disclosure, there are already a number of federal whistleblower programs that may incentivize companies to monitor their compliance with the covered statutes. As previously discussed, certain parts of the FinCEN Whistleblower Program are already operational. FinCEN has established an Office of the Whistleblower, and since May 2021, whistleblowers have been submitting tips—primarily by email—to the Office of the Whistleblower. The Office of the Whistleblower's staff conduct an initial review of incoming tips to, among other things, determine whether the submitted information should be further

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[78] *Id.*
[79] *See generally* 31 CFR 501 (App. A) (for OFAC reporting, procedures, and penalties regulations).
[80] *See* OFAC, *Frequently Asked Questions, FAQ 13*, https://ofac.treasury.gov/faqs/13.
[81] *See* 88 FR 54867 (Aug. 9, 2023); *see also* 31 CFR 850.704 (describing Treasury's requirements for voluntary self-disclosure of conduct that may have resulted in a violation of any part of the Outbound Investment Security Program order).

shared, including with FinCEN's Office of Enforcement, OFAC, and Justice's Criminal Division and National Security Division. These and the other offices with which the Office of the Whistleblower share the information submitted by whistleblowers have complete discretion to make decisions about whether to open an investigation or bring a civil enforcement action or criminal case based on the information contained in the tip, and how to conduct any resulting investigation, enforcement action, or prosecution.

In addition, depending on the specific nature of the matter they wish to report, whistleblowers may already have other mechanisms through which to report actionable tips, complaints, or reports, and may already be pursuing such options. Whistleblowers who wish to submit tips to Justice about violations of the covered statutes, or conspiracies to violate these laws, may already do so.[82] These include violations of the BSA, IEEPA, TWEA, and the Kingpin Act. In 2024, Justice launched the Criminal Division Corporate Whistleblower Pilot Program. In 2025, Justice's Criminal Division reviewed and expanded the pilot whistleblower program. Justice's whistleblower program seeks whistleblower tips related to any of the following subject areas:

- Violations by financial institutions, their insiders, or agents, including schemes involving money laundering, anti-money laundering compliance violations, registration of money transmitting businesses, and fraud, including but not limited to fraud against or non-compliance with financial institution regulators.
- Violations by or through companies related to sanctions offenses, material support of terrorism, or cartels and transnational criminal organizations, including money laundering, narcotics, Controlled Substances Act, and other violations.

[82] *See generally* DOJ, *Criminal Division Corporate Whistleblower Awards Pilot Program* (issued Aug. 1, 2024; revised May 12, 2025), https://www.justice.gov/criminal/criminal-division-corporate-whistleblower-awards-pilot-program.

- Violations related to foreign corruption and bribery by, through, or related to companies, including violations of the Foreign Corrupt Practices Act, violations of the Foreign Extortion Prevention Act, and violations of the money laundering statutes.
- Violations committed by or through companies related to the payment of bribes or kickbacks to domestic public officials, including but not limited to federal, state, territorial, or local elected or appointed officials and officers or employees of any government department or agency.
- Violations committed by or through companies related to (a) federal health care offenses and related crimes involving health care benefit programs, and (b) fraud against patients, investors, and other non-governmental entities in the health care industry.
- Violations by or through companies related to fraud against, or the deception of, the United States in connection with federally funded contracting or federal programs, where such fraud does not involve health care or illegal health care kickbacks.
- Violations by or through companies related to trade, tariff, and customs fraud.
- Violations by or through companies related to federal immigration law.[83]

A whistleblower who provides Justice with original and truthful information about corporate misconduct that results in a successful forfeiture may be eligible for an award from Justice.[84]

Whistleblowers may also submit tips about financial crimes to various federal whistleblower programs that are currently administered by other agencies or authorities. For instance, the SEC administers a whistleblower program pursuant to Section 21F to the Securities Exchange Act, and the CFTC administers a whistleblower award program under Section 23 of

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[83] *See* DOJ, *Corporate Whistleblower Awards Pilot Program* (issued Aug. 1, 2024; revised May 12, 2025) at Section II.2.3, https://www.justice.gov/criminal/media/1400041/dl?inline.

[84] While both DOJ's and FinCEN's respective whistleblower programs seek tips about violations of anti-money laundering laws and sanctions violations, the basis for calculating monetary awards is different: DOJ bases its awards solely on the forfeited amount, while FinCEN would exclude the amount of forfeited funds from its calculation pursuant to 31 U.S.C. 5323(a)(2)(B)(ii) and base the award amount solely on the imposition of other monetary sanctions (which are primarily penalties).

the Commodity Exchange Act.[85] The SEC and CFTC whistleblower programs were established by the Dodd-Frank Act, enacted in 2010. The Internal Revenue Service (IRS) also has a whistleblower program, which was established by the Tax Relief and Health Care Act of 2006.[86] The IRS's whistleblower program offers monetary rewards to whistleblowers who voluntarily expose tax law violations.

Based on the information available to FinCEN's Office of the Whistleblower, around twenty (20) percent of the initial whistleblower tips received from 2021 through February 2025 are known to have also been submitted to whistleblower programs administered by other federal agencies, such as the SEC and CFTC.

2. Expected Economic Effects

In forming its expectation of the potential economic consequences of the proposed rule, FinCEN assessed what it considered the most likely anticipated changes to baseline expectations and activities of the identified groups of potentially affected parties.

a. Expected Benefits

FinCEN expects that the Whistleblower Program, as proposed, would lead to an increased submission of tips that will enhance the ability of the affected federal departments and agencies to enforce the covered statutes. Whistleblower information would benefit Treasury and DOJ when it is sufficiently specific, credible, and timely to cause an appropriate agency or authority to commence, open, or reopen an examination or investigation, or inquire concerning different conduct as part of a current examination or investigation.

In already pending investigations, whistleblower information would benefit Treasury and DOJ when it significantly contributes to the successful enforcement of the covered action or related action. In such a case, whistleblower information would enable Treasury and/or DOJ to

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[85] *See generally* SEC, *Whistleblower Program*, https://www.sec.gov/enforcement-litigation/whistleblower-program; CFTC, *Whistleblower Program*, https://www.whistleblower.gov/.
[86] *See generally* IRS, *Whistleblower Office*, https://www.irs.gov/compliance/whistleblower-office.

collect monetary sanctions they may not have otherwise been able to collect without further commitments of time and investigatory resources. In addition, whistleblower information would be especially valuable to Treasury and DOJ when it enables them to complete investigations more quickly.

b. Expected Costs

Aside from changes to costs that flow directly from a change in reporting or recordkeeping obligations,[87] changes in cost may include those due to a change in behavior in response to a change in incentives introduced by a rule. Such changes in cost could be associated with activities undertaken by a party directly or could change as the result of activities taken by other parties that have an effect on the affected party.

i. Costs to Whistleblowers

Costs to whistleblowers include economic and financial costs. A preliminary presentation of reporting costs is included in the Paperwork Reduction Act (PRA) analysis below.

ii. Costs to Potential Subjects of Form TCR

To determine whether potential subjects of Form TCR will incur economic costs associated with the proposed rule, FinCEN first examined the regulatory baseline as it pertains to the companies that may be the subjects of a Form TCR. FinCEN then assesses whether, in light of that regulatory baseline, such companies would incur any incremental costs as a result of the implementation of the proposed rule. If FinCEN identifies such incremental costs, then it can estimate the distribution of potentially affected companies by magnitude of the anticipated incremental costs.

FinCEN assumes that the great majority of entities that may become the subject of a Form TCR have policies, procedures, and controls in place that ensure their compliance with the

[87] Such costs are typically identified and accounted for under the PRA analysis. *See infra* Section VI.E. (for the PRA analysis).

covered statutes. This may in part result from the fact that, as described above, the status quo already includes incentives for companies that may be the subject of a Form TCR to take action to ensure they comply with the covered statutes, including by reviewing their existing internal policies, procedures, or controls and making any necessary or advisable revisions or changes to those policies, procedures, or controls. As explained above, these incentives include Treasury and DOJ's voluntary self-disclosure policies, as well as currently operating federal whistleblower programs. For example, FinCEN's Whistleblower Program is already receiving tips, which it shares with the components of Treasury and DOJ that enforce the covered statutes. In addition, DOJ has a fully operational Criminal Division Corporate Whistleblower Awards Pilot Program that offers financial awards for whistleblowers who report violations of the covered statutes, among other laws.

Because such incentives already exist, and because their effect on the activities of potential subjects of Form TCRs can already be presumed to have taken place, FinCEN considers that the proposed rule will only cause a small minority of potentially affected parties to incur incremental costs specifically associated with the proposed rule. Those costs may include: (i) one-time familiarization costs associated with FinCEN's Whistleblower Program; (ii) review of internal policies, procedures, and controls related to compliance with the covered statutes; (iii) efforts to update such policies, procedures, and controls as deemed necessary or prudent in light of the Whistleblower Program; and (iv) capacity-building expenditures, such as the hiring of additional personnel to support in-house programs to expedite review and response to employee complaints reported internally. At this time, FinCEN does not have sufficient data to estimate the distribution of potentially affected businesses by magnitude of any anticipated novel costs with any reliable precision. However, because these costs would be incremental to the regulatory baseline and baseline of practices as described above, FinCEN anticipates that the expected population of actually affected subjects of Form TCR would be very small, and among that subpopulation of affected parties the majority are unlikely to undertake any new activities

which would result in a material change in expenditures. Thus, the economic costs of this proposal are not expected to exceed $100 million, on average, annually.

iii. Costs to Government

To implement the rule, FinCEN expects to incur certain operating costs that would include approximately $1.8 million in the first year and approximately $1.6 million each year thereafter.[88] These estimates include anticipated novel expenses related to technological implementation,[89] stakeholder outreach, and informational support, as well as certain incremental increases to pre-existing administrative and logistical expenses. These estimates are generally consistent with previous estimates provided by the Congressional Budget Office that anticipated costs of approximately $1 million per operational year and average direct spending of approximately $300,000 per year on program development through the first two years of full operation.[90]

While such operating costs, if offset by budget increases, need not be considered part of the general economic cost of a rule, FinCEN acknowledges that this treatment implicitly assumes that resources commensurate with the novel operating costs would exist. If this assumption does not hold, then operating costs associated with a rule may impose certain economic costs on the public in the form of opportunity costs from the agency's forgone alternative activities and the foregone benefits of those activities. Putting that into the context of this proposed rule, and benchmarking against FinCEN's actual appropriated budget for fiscal year 2023 ($190.2 million),[91] the corresponding opportunity cost would resemble forgoing less than one percent of current agency activities annually.

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[88] This estimate is consistent with the combined cost of development contract support plus internal staff labor at the GS-15 level in year 1, operations and management contract support plus internal staff labor at the GS-15 level in year 2, and operations and management contract support plus internal staff labor at the GS-15 and GS-14 level in year 3.

[89] Technological implementation for a new reporting form contemplates expenses related to development, operations, and maintenance of system infrastructure, including design, deployment, and support.

[90] U.S. House Committee on Financial Services. (2020). *Coordinating Oversight, Upgrading and Innovating Technology, and Examiner Reform Act of 2019* (H. Rept. 116 245).

[91] FinCEN, *Congressional Budget Justification and Annual Performance Plan and Report FY 2025* (2024), https://home.treasury.gov/system/files/266/12.-FinCEN-FY-2025-CJ.pdf.

FinCEN notes that these estimates represent gross pro forma accounting costs, and do not account for potential reductions in direct costs engendered by certain anticipated efficiencies the proposed rule might introduce. For example, in some cases, whistleblower information might provide investigators with the type of analysis for which they otherwise might have had to retain and pay an expert or, similarly, with specific evidence of violations of the covered statutes that may otherwise have been identifiable only after more time-consuming research by investigators. Receiving such information from a whistleblower would reduce government costs because instead of payment to an expert before the outcome of an investigation is realized, or use of investigative personnel resources in time-consuming research with an uncertain outcome, Treasury or DOJ would instead only pay a whistleblower for such insight if the analysis led to the successful enforcement of a covered action. In such cases, payment would effectively be funded by the monetary sanctions from the party that engaged in wrongdoing, rather than being directly borne by the government. Because it is unclear in all circumstances which federal department or agency would otherwise incur the costs of retaining an expert, no attempt has been made to net such costs out of the preceding estimates of pro forma expected costs to FinCEN.

In addition, the proposed rule is not expected to introduce significant, direct costs related to the payment of awards. Section 5323 of the BSA established a revolving fund—the "Financial Integrity Fund"—that is available to the Secretary, without further appropriation or fiscal year limitations, for the payment of awards. Generally, the Financial Integrity Fund is funded by the monetary sanctions collected in connection with covered actions.[92] As a result, the costs associated with whistleblower awards for both covered actions and related actions should be funded by the monies collected from the covered actions that were successfully enforced as a result of the corresponding whistleblower tips.[93]

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[92] However, no amounts to be deposited or transferred into the United States Victims of State Sponsored Terrorism Fund pursuant to the Justice for United States Victims of State Sponsored Terrorism Act (34 U.S.C. 20144) or the Crime Victims Fund pursuant section 1402 of the Victims of Crime Act of 1984 (34 U.S.C. 20101) shall be deposited into or credited to the Financial Integrity Fund. *See* 31 U.S.C. 5323(b)(4)(C).

[93] *See generally* 31 U.S.C. 5323(b)(3)-(5).

3. Economic Consideration of Policy Alternatives

With a view toward its potential statutory obligations,[94] FinCEN considered a number of policy alternatives to the Whistleblower Program as proposed. The policy consideration of alternatives is incorporated by discussion in the section-by-section analysis, where these considerations reflect discretion exercised in statutory implementation with respect to programmatic definitions,[95] structure, and operations. The discussion below is limited to economic consideration of alternatives to the format and submission mechanism for the forms associated with the rulemaking (Form TCR and Form WB-APP) as proposed, which we consider to be the most viable alternatives to FinCEN's proposal from an economic perspective.

a. Status Quo

Currently, FinCEN does not prescribe a form or method for submission of information, and whistleblowers often initially submit information in an emailed or similar free-form written submission. FinCEN considered whether to continue to allow whistleblowers to submit email or other free-form submissions and concluded that using a standardized electronically submitted form, for a number of reasons, would improve the balance of expected benefits to costs. First, the standardized, electronically submitted form is expected to improve the reporting experience for whistleblowers. A standardized form may save them time when initially submitting information to FinCEN because it would allow them to rely on a reporting format that has already been developed, thereby obviating that need to independently determine how best to structure the information they wish to report. The standardized form would also enable whistleblowers to clearly communicate the specific types of information most useful to government personnel making an initial determination about whether to pursue a lead, because the form was developed with those personnel's input. Second, the proposed standardized,

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[94] A consideration and explanatory discussion of policy alternatives is expressly required by both the RFA (absent certification. *See infra* Section VI.C. (and the UMRA) (when expenditures are expected to exceed the inflation-adjusted statutory threshold); *see infra* Section VI.D..

[95] *See supra* Section III (for descriptions of applicable programmatic definitions for the Whistleblower Program).

electronically submitted form is expected to enhance efficiency in processing the Form TCRs received. FinCEN anticipates that structured electronic submissions will make it more efficient for personnel to record, review and analyze incoming whistleblower information.

b. Paper or Printable Forms

FinCEN also considered whether to provide printable versions of Form TCR and Form WB-APP and allow whistleblowers to send paper submissions by U.S. mail or commercial carrier to FinCEN's offices but determined it would strike a better balance of anticipated benefits to costs to require submissions to be made using an online portal, as proposed. Using an online portal to file Forms TCR and Forms WB-APP electronically is expected to more easily facilitate the transmission of whistleblower information, which is especially important when whistleblower information is time-sensitive in nature. Using an online portal specific to the submission of these forms also provides a direct and secure means for sensitive information to be delivered to FinCEN. This is especially important when whistleblower information relates to national security. Additionally, using such an online portal is expected to be a more efficient method to receive whistleblower information and store it in FinCEN databases because it would eliminate the costs of manually re-entering whistleblower information into FinCEN's databases and would reduce the probability of transcription error.

c. Unstructured Submissions via Webpage Interface

FinCEN considered an alternative to its proposed rule that—while nevertheless requiring the electronic submission of Form TCR and Form WB-APP information via an online interface—submissions might be made through a simple, dedicated webpage that would be similar to the current free-form approach by allowing users to input select fields of contact information as desired and either input the tip information they desired to report directly into a free form textbox or upload the prepared information as either a document or PDF. This alternative could potentially have the advantage of being less burdensome for certain whistleblowers with information that is relatively uncomplicated to document and can be

communicated without the need for further clarification or supplementation. FinCEN, however, considered that there may be more instances where the lack of structure and tractability of submissions via textbox or uploaded file might impose greater burdens on both those submitting whistleblower information and those receiving and further processing it, because of the likely need to subsequently apply some uniform structure to the various forms and formats in which the information was originally received. The lack of structure imposed on the reported information might also lead to lost value in cases where whistleblowers believe they have provided sufficient contact information to receive necessary follow-up communications, but in fact have not, or have input erroneous contact information (such as by simple typographical error) with insufficient alternatives to enable the further contact needed to make their tips actionable. It could also introduce greater private costs if a whistleblower, who might otherwise be fully capable of reporting the required information by completing the applicable form independently, is unsure of his or her own ability and opts to retain an attorney in a situation where the benefit of that assistance is not commensurate with its cost.

B. EOs 12866 and 13563

EOs 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic environmental, public health and safety effects, distributive impacts, and equity). EO 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. FinCEN's assessment in Section VI.A. describes why it would be unable to identify an average annual effect on the economy of $100 million or more that could be solely attributed to the proposed Whistleblower Program in any given year of the foreseeable future. This is consistent with OMB's determination that the rule does not constitute a "significant regulatory action" under section 3(f)(1) of EO 12866.

Given FinCEN's preliminary conclusion about the expected significance of the proposed rule, a more exhaustive regulatory impact analysis is not required pursuant to EOs 12866 and 13563. Nevertheless, FinCEN has provided the foregoing discussion of economic considerations with a view to providing the public with adequate insight into the analysis that informed the rule as proposed, including key assumptions about: how potentially affected parties would behave in the absence of the proposed rule; the burden associated with activities newly undertaken as a consequence of the proposed rule; and how expected costs may be distributed across the categories of potentially affected parties. Because these form the basis of FinCEN's estimates of the expected burden and net benefits of the proposed rule, the extent to which they may be improved by more accurate, detailed, or complete data (either quantitative or qualitative) would depend on the feedback of relevant market participants, including currently affected parties and potential future affected parties. Accordingly, public review and response to the additional, regulatory assessment-focused requests for comment included below are invited.[96]

C. Regulatory Flexibility Act (RFA)

When an agency issues a notice of proposed rulemaking, the RFA[97] requires the agency either to provide an initial regulatory flexibility analysis (IRFA) with the proposed rule or certify that the proposed rule would not have a significant economic impact on a substantial number of small entities.[98] FinCEN certifies that the proposed rule is not expected to have a significant economic impact on a substantial number of small entities. The basis for this expectation is discussed in further detail below.

As a threshold matter, the RFA does not apply to two of the three identified categories of parties expected to be affected by the rule.[99] As discussed above, FinCEN anticipates the proposed rule to affect: (i) whistleblowers; (ii) entities that may become the subject of a

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[96] *See supra* Section IV. (for request for comments on the proposed rule); *see also infra* Section VI.F. (for request for comments applicable to the regulatory analysis).
[97] 5 U.S.C. 601 *et seq*.
[98] Small entities as defined in 5 U.S.C. 601(6) include any "small business" (as defined in 601(3)), "small organization" (as defined in 601(4)), or "small governmental jurisdiction" (as defined in 601(5)).
[99] *See supra* Section VI.A.1.a. (for baseline of affected parties).

whistleblower's Form TCR submission; and (iii) the federal government departments and agencies that would receive information from the Form TCR submitted (primarily Treasury and DOJ). Because whistleblowers must be individuals, or groups of individuals, acting in their respective capacities as natural persons, they do not fall under any of the three categories of small entity to which the RFA applies. Similarly, the departments and agencies that comprise the third group of expected affected parties are also not covered entities under the RFA.

The group of potentially affected parties to whom RFA considerations apply is the population of potential subjects of Form TCR. Table 5 and Table 6 present FinCEN's estimates of the proportion of each potentially affected financial institution type or industrial category that would meet the respective criterion of "small" as defined in 13 CFR 121.201, or as otherwise defined for purposes of the RFA. These tables are estimated over the same baseline populations presented in Table 1 and Table 2 above, respectively, and are subject to the same caveats about representativeness, completeness, and limits to count de-duplication.

Table 5. Financial Institutions under the BSA

Financial Institution Type[a]	Percentage of Firms under the Small Business Administration (SBA) Small Business Threshold
Banks[b]	84.83%[c]
Insurance Companies[d]	81.20%[e]
Broker-Dealers[f]	96.56%[g]
Principal MSBs[h]	94.96%[i]
Agent MSBs	100%
Casinos or Card Clubs[j]	65.69%[k]
FCMs) and IBCs[l]	93.69%[m]
Mutual Funds[n]	93.99%[o]
Dealers in Precious Metals, Stones, and Jewels[p]	99.12%[q]
Loan or Finance Companies[r]	93.50%[s]
Housing GSEs[t]	0%[u]
Operators of Credit Card Systems[v]	0%[w]

[a] *See* 31 CFR 1010.100(t) (definition of financial institution).

[b] *See* 31 CFR 1010.100(t)(1); *see also* 31 CFR 1010.100(d) (definition of bank).

[c] The SBA threshold for a small bank is $850 million in total assets. This percentage excludes 970 commercial banks and 454 credit unions above that threshold. See Federal Reserve Statistical Release, Large Commercial Banks, and National Credit Union Administration, Financial Trends in Federally Insured Credit Unions.

[d] *See* 31 CFR 1025.100(g) (definition of "insurance company or insurer" for purposes of applicability of FinCEN regulations).

[e] The SBA threshold for a small business in this category (NAICS 524113) is $47 million in annual receipts. According to the 2022 Statistics of U.S. Businesses, Data by Enterprise Receipts Size, 739 out of 910 firms received under $50 million in annual receipts. This is the closest available threshold provided by the Census Bureau data.

[f] *See* 31 CFR 1010.100(t)(2).

[g] The SBA threshold for a small business in this category (NAICS 523120, 523920) is $47 million in annual receipts. According to the 2022 Statistics of U.S. Businesses, Data by Enterprise Receipts Size, 5,487 out of 5,691 firms in NAICS 523920 and 22,956 out of 23,956 firms in NAICS 523120 had under $50 million in annual receipts, which is an average of 96.56%.

[h] *See* 31 CFR 1010.100(t)(3); *see also* 31 CFR 1010.100(ff) (definition of money services business).

[i] The SBA threshold for a small business in this category (NAICS 522390, 522320) is $28.5 and $47 million, respectively. According to the 2022 Statistics of U.S. Businesses, Data by Enterprise Receipts Size, 2,844 out of 2,997 firms in NAICS 522390 received under $30 million in annual receipts and 3,357 out of 3,532 in NAICS 522320 received under $50 million in annual receipts, which is an average of 94.96%. $30 and $50 million were the closest available thresholds provided by the Census Bureau data.

[j] *See* 31 CFR 1010.100(t)(5)-(6)

[k] The SBA threshold for a small business in this category (NAICS 713210, 721120, 713290) is $34, $40, and $40 million, respectively. The 2022 Statistics of U.S. Businesses, Data by Enterprise Receipts Size contains data on the number of firms by revenue size for NAICS 713210 and 713290, which indicates that 161 out of 262 firms in NAICS 713210 received under $35 million in annual receipts, 1,848 out of 1,940 in NAICS 713290 received under $40 million in annual receipts, and 126 out of 312 in NAICS 721120 received under $40 million in annual receipts, which is an average of 65.69%.

[l] *See* 31 CFR 1010.100(t)(8-9).

[m] The SBA threshold for small businesses in these categories (NAICS 523140, 523130) is $47 million. According to the 2022 Statistics of U.S. Businesses, Data by Enterprise Receipts Size for NAICS 523140, 699 out of 733 firms received under $50 million in annual receipts, and for NAICS 523130, 565 out of 614 firms received under $50 million in annual receipts. This is an average of 93.69%.

[n] *See* 31 CFR 1010.100(t)(10).

[o] The SBA threshold for a small business in this category (NAICS 525910) is $40 million in annual receipts. According to the 2022 Statistics of U.S. Businesses, Data by Enterprise Receipts Size, 313 out of 333 firms received under $50 million in annual receipts. This is the closest available threshold provided by the Census Bureau data.

[p] *See* 31 CFR 1027.100(d) (definition of a "dealer" in precious metals, stones, or jewels for purposes of applicability of FinCEN regulations).

[q] The SBA threshold for a small business in this category (NAICS 423940) is 125 employees. According to the 2022 Statistics of U.S. Businesses, Data by Enterprise Employment Size, 59 out of 6,742 had over 100 employees. This is the closest available threshold provided by the Census Bureau data.

[r] *See* 31 CFR § 1010.100(lll) (definition of "loan or finance company").

[s] The SBA threshold for a small business in this category (NAICS 522292, 522310) is $47 and $15 million, respectively. According to the 2022 Statistics of U.S. Businesses, Data by Enterprise Receipts Size, 3,307 out of 3,711 firms in NAICS 522292 received under $50 million in annual receipts, and 9,428 out of 9,631 in NAICS 522310 received under $15 million in annual receipts, which is an average of 93.50%.

[t] *See* 31 CFR 1010.100(mmm) (definition of "housing government sponsored enterprise").

[u] Housing government sponsored entities (GSEs) are U.S. Government-sponsored enterprises and include Fannie Mae and Freddie Mac. None of these entities are considered small businesses by the SBA.

[v] *See* 31 CFR 1028.100(e) (definition of "operator of a credit card system" for purposes of applicability of FinCEN regulations).

[w] Based on FinCEN review of active, U.S. based market participants at year end 2023, there were only four credit card operators that met the definition in 31 CFR 1028.100(e). None of these entities were considered small businesses by SBA standards.

As Table 5 demonstrates, there is considerable variation in the proportion of each of the primary categories of financial institution under the BSA that would fall below the size threshold designated in 13 CFR 121.201, ranging from an expectation that no affected institution in the category would be considered small, as is the case for housing GSEs and operators of credit card

systems, to an expectation that essentially any institution in the category would likely meet the criteria, as is likely true for most MSB agents.

Table 6 illustrates that for other potential subjects of the proposed Form TCR, there is less variation in the proportion of small businesses across the identified industrial categories. In all cases where the population distribution is identified, more than half of the industrial category is comprised of businesses that would be defined as small, and in all but one case the proportion is greater than two-thirds.

Table 6. Select other Potential Subjects of Form TCR

Industries[a]	Percentage of Firms under the SBA Small Business Threshold
Agriculture[b]	85.14%
Aviation[c]	94.90%
Construction[d]	98.35%
Crypto/Digital Assets[e]	NA
Defense (Military Vehicles and Aerospace)[f]	89.32%
Education and University[g]	60.94%
Energy (Oil & Gas, and Electrical)[h]	95.51%
Healthcare (Hospitals and Health Insurance) and Pharmaceuticals[i]	72.81%
Humanitarian & NGO[j]	99.12%
Investment Advisors Registered with the SEC[k]	79.69%
Investment Advisors Not Registered with the SEC[l]	97.23%
Lobbying (Public Relations)[m]	97.97%
Other Manufacturing[n]	98.25%
Mining[o]	97.22%
Shipping & Logistics (Air, Sea, Land)[p]	98.81%
Small Arms[q]	98.18%
Software and Data Processing[r]	92.28%
Telecommunications[s]	99.18%
Tourism[t]	97.91%
Transportation[u]	97.32%

[a] See Table 1 for BSA-covered financial entities.

[b] The average SBA threshold for a small business in this category (NAICS 11) is $3.4 million in annual receipts. According to the 2022 Statistics of U.S. Businesses, Data by Enterprise Receipts Size, 19,241 out of 22,599 firms received under $2.5 million in annual receipts. This is the closest available threshold provided by the Census Bureau data.

[c] The SBA threshold for small businesses in this category (NAICS 4881) is $40 million in annual receipts. According to the 2022 Statistics of U.S. Businesses, Data by Enterprise Receipts Size, 4,171 out of 4,395 firms received under $40 million in annual receipts.

[d] The average SBA threshold for small businesses in this category (NAICS 23) is $28.76 million in annual receipts. According to the 2022 Statistics of U.S. Businesses, Data by Enterprise Receipts Size, 769,640 out of 782,487 firms received under $30 million in annual receipts. This is the closest available threshold provided by the Census Bureau data.

[e] The NAICS classification system does not contain a code that corresponds directly to this category. The Money Services Businesses or Commodities Broker categories in Table 1 may include some firms that offer crypto/digital assets services.

[f] The SBA threshold for a small business in this category is 1,500 employees (NAICS 336992) and an average of 1,320 employees (for the industries contained in NAICS 3364). According to the 2022 Statistics of U.S. Businesses, Data by Enterprise Employment Size, 48 out of 57 firms in NAICS 336992 had under 1,500 employees, and 1,269 out of 1,344 firms in NAICS 3364 had under 1,500 employees (this is the closest available threshold provided by the Census Bureau data). This is an average of 89.32% of firms below the SBA threshold.

[g] The average SBA threshold for a small business in this category (NAICS 6113) is $34.5 million in annual receipts. According to the 2022 Statistics of U.S. Businesses, Data by Enterprise Receipts Size, 1,520 out of 2,494 firms received under $35 million in annual receipts.

[h] The SBA threshold for a small business in this category is 1,250 employees (NAICS 211) and an average of 744 employees (for the industries contained in NAICS 22111). According to the 2022 Statistics of U.S. Businesses, Data by Enterprise Employment Size, 51 out of 4,213 firms in NAICS 211 had over 1,000 employees, and 90 out of 1,158 firms in NAICS 22111 had over 750 employees (these were the closest available thresholds provided by the Census Bureau data). This is an average of 95.51% of firms below the SBA threshold.

[i] The SBA threshold for a small business in this category is generally $47 million in annual receipts (NAICS 622, 524114) and an average of 1,150 employees (for the industries contained in NAICS 3254). According to the 2022 Statistics of U.S. Businesses, Data by Enterprise Receipts Size 47.64% of firms in NAICS 622 and 74.97% of firms in NAICS 524114 received under $50 million in annual receipts. 136 out of 3,254 firms in NAICS 3254 had over 1,000 employees (this is the closest available threshold provided by the Census Bureau data). This is an average of 72.81% of firms below the SBA threshold.

[j] The average SBA threshold for small businesses in this category (NAICS 813) is $22.92 million in annual receipts. According to the 2022 Statistics of U.S. Businesses, Data by Enterprise Receipts Size, 296,499 out of 299,103 firms received under $25 million in annual receipts. This is the closest available threshold provided by the Census Bureau data.

[k] The SBA threshold for a small business in this category (NAICS 523940) is $47 million in annual receipts. According to the2022 Economic Census Data Releases (Establishment and Firm Size Statistics, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms), 39,589 out of 49,678 firms received under $25 million in annual receipts. This is the closest available threshold provided by the Census Bureau data.

[l] The SBA threshold for a small business in this category (NAICS 523910) is $47 million in annual receipts. According to the 2022 Statistics of U.S. Businesses, Data by Enterprise Receipts Size, 10,943 out of 11,254 firms received under $50 million in annual receipts. This is the closest available threshold provided by the Census Bureau data.

[m] The SBA threshold for small businesses in this category (NAICS 54182) is $19 million in annual receipts. According to the 2022 Statistics of U.S. Businesses, Data by Enterprise Receipts Size, 7,992 out of 8,157 firms in this category received under $20 million in annual receipts.

[n] The SBA threshold for small businesses in this category (NAICS 31-33) is generally 500 employees. According to the 2022 Statistics of U.S. Businesses, Data by Enterprise Employment Size, 235,088 out of 239,265 firms in this category had under 500 employees. This is the closest available threshold provided by the Census Bureau data.

[o] The average SBA threshold for small businesses in this category (NAICS 212) is 961 employees. According to the 2022 Statistics of U.S. Businesses, Data by Enterprise Employment Size, 98 out of 3,523 firms in this category had over 1,000 employees. This is the closest available threshold provided by the Census Bureau data.

[p] The SBA threshold for a small business in this category is generally 1,500 employees (NAICS 481, 483) and an average of 917 employees (for the industries contained in NAICS 484). According to the 2022 Statistics of U.S. Businesses, Data by Enterprise Employment Size, 22 out of 2,644 firms in NAICS 481, and 35 out of 1,431 firms in NAICS 483 had over 1,500 employees, and 466 out of 157,072 firms in NAICS 484 had over 1,000 employees (this the closest available threshold provided by the Census Bureau data). This is an average of 98.81% of firms below the SBA threshold.

[q] The SBA threshold for small businesses in this category (NAICS 332994) is 1,000 employees. According to the 2022 Statistics of U.S. Businesses, Data by Enterprise Employment Size, 9 out of 494 firms in this category had over 1,000 employees.

[r] The SBA threshold for small businesses in this category (NAICS 5112, 518) is $47 million and $40 million in annual receipts, respectively. According to the 2022 Statistics of U.S. Businesses, Data by Enterprise Receipts Size data for NAICS 518, 10,419 out of 11,482 firms received under $40 million in annual receipts, and for NAICS 5112, 12,830 out of 13,674 firms received under $50 million in annual receipts. This is an average of 92.28%.

[s] The SBA threshold for small businesses in this category (NAICS 517) is generally 1,500 employees. According to 2022 Statistics of U.S. Businesses, Data by Enterprise Employment Size, 99 out of 12,086 firms in this category had over 1,500 employees.

[t] The average SBA threshold for a small business in this category (NAICS 5615, 712, 713, 721 (excluding 7213), and 487) ranges from $19.5 to $28.75 million, with an average of $23.32 million. According to the 2022 Statistics of U.S. Businesses, Data by Enterprise Receipts Size, an average of 97.91% of firms fell below the applicable small business threshold for each category.

[u] The average SBA thresholds for a small business in this category (NAICS 485, 488) is $27.5 and $32.9 million, respectively. According to the 2022 Statistics of U.S. Businesses, Data by Enterprise Receipts Size, 16,430 out of 16,676 firms in NAICS 485 and 36,076 out of 37,534 in NAICS 488 received under $30 million in annual receipts, which is an average of 77.50%. $30 million is the closest available threshold provided by the Census Bureau data.

While this data suggests that the population of identified potentially affected entities that may become the subject of a Form TCR includes a substantial number of small businesses, FinCEN nevertheless believes that an IRFA would not be required.

For an IRFA to be required, there must be a reasonable basis to believe that two conditions hold jointly. There must be an expectation that the rule under consideration will have an economic effect on a substantial number of small entities, in this case businesses, and that economic effect must be expected to be significant.

As discussed above in the baseline of affected parties,[100] not all potentially affected parties are expected to incur economic effects. Additionally, and also discussed above,[101] it is not clear that the economic effects on parties that are expected to be affected by the proposed rule are likely to be uniformly significant. Because neither of the necessary precursor conditions is expected to be met independently, they are unlikely to hold jointly. Therefore, FinCEN certifies that the proposed rule is not expected to have a significant economic impact on a substantial number of small entities.

Parties that have reason to believe this certification is inadequately informed or has failed to take into consideration certain relevant facts, data, studies, or other factors that would change the conclusions of this analysis are invited to respond to the additional requests for comment below.[102]

D. Unfunded Mandates Reform Act (UMRA)

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[100] *See supra* Section VI.A.1.a. (for the baseline of affected parties).

[101] *See supra* Section VI.A.2.b. (for discussion of the different economic effects incurred by different categories of affected parties).

[102] *See infra* Section VI.F. (for request for comments related to the regulatory analysis).

Section 202 of UMRA[103] requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by the state, local, and Tribal governments, in the aggregate, or by the private sector, of $193 million or more in any one year.[104] FinCEN has determined that the proposed rule will not result in expenditures by the state, local, and Tribal governments, collectively, of $193 million or more in any one year. Any substantive novel expenditures incurred by government as a consequence of the proposed rule are expected to accrue at the federal level only.[105] While FinCEN is aware that thirty-three (33) states and the District of Columbia have whistleblower laws, such laws vary in terms of whom they apply to and the extent of their potential overlap with any provisions of the proposed rule. The proposed rule is not expected to have any substantive, economically meaningful interactive effects with these state laws or regulations or the expenditures incurred in their enforcement by the states.

At this time, FinCEN lacks the data necessary to estimate with any certainty the expenditures by the private sector that would be exclusively attributable to the proposed rule. In the discussion of broad economic considerations at Section VI.A. and the discussion of expected economic costs at Section VI.A.2.b.ii. above, respectively, FinCEN presents reasons why a general determination of significance is challenging and a quantification of costs to potential subjects of Form TCR (including the private sector) is infeasible. Despite this challenge, in those sections FinCEN has provided reasoning that explains why FinCEN considers it unlikely that a significant number of entities would incur substantial cost associated with this proposed regulation. Given that expenditures—the metric of concern for UMRA purposes—constitute

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[103] Public Law 104–4.

[104] The U.S. Bureau of Economic Analysis reports the annual value of the gross domestic product implicit price deflator for calendar year 1995 (the year UMRA was enacted) as 66.939, and as 128.974 for calendar year 2025 (the most recent available). Thus, the inflation-adjusted estimate for $100 million is 128.974 ÷ 66.939 × $100 million, or $192.7 million. *See* U.S. Bureau of Economic Analysis, Table 1.1.9. Implicit Price Deflators for Gross Domestic Product, https://apps.bea.gov/iTable/?reqid=19&step=3&isuri=1&1921=survey&1903=13#eyJhcHBpZCI6MTksInN0ZXBzIjpbMSwyLDMsM10sImRhdGEiOltbIk5JUEFfVGFibGVfTGlzdCIsIjEzIl0sWyJDYXRlZ29yaWVzIiwiU3VydmV5Il0sWyJGaXJzdF9ZZWFyIiwiMTk5NSJdLFsiTGFzdF9ZZWFyIiwiMjAyNSJdLFsiU2NhbGUiLCIwIl0sWyJTZXJpZXMiLCJBIl1dfQ==.

[105] *See supra* Section VI.A.2.b.iii. (for economic analysis of the costs to government from the proposed rule).

only one element of the full economic costs that may be borne by an affected party, as discussed above, it would follow that if economic costs, broadly, are not expected to exceed $100 million annually on average,[106] a proper subset of those costs could not simultaneously exceed $193 million. On this basis, FinCEN considers it reasonable to reach a preliminary determination that because it is unlikely the proposed rule would independently result in expenditures of $193 million or more in any one year, no additional regulatory impact analysis would be required under UMRA.

FinCEN has specifically requested comment in Section VI.F. below in the event that potentially affected parties believe their expected costs would be substantially higher, or they possess information and data that would cause FinCEN to reconsider preliminary determinations about either the general economic significance of the rule or the likelihood of private sector expenditures exceeding $193 million annually, or both. Moreover, in the event that FinCEN may have underestimated the expected costs of the proposed rule to the private sector, because FinCEN prepared the assessment of impact presented above,[107] including a consideration of regulatory alternatives,[108] as would be required by UMRA, the public should nevertheless have a sufficiently broad basis from which to provide comment.

E. Paperwork Reduction Act (PRA)

The information collection requirements in this proposed rule are being submitted to Office of Management and Budget (OMB) for review in accordance with the PRA. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a current valid control number assigned by OMB.

Written comments and recommendations for the proposed information collection can be submitted by visiting www.reginfo.gov/public/do/PRAMain. Find this particular document by

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[106] *See supra* Section VI.B. (for economic analysis required pursuant to EOs 12688 and 13563 discussing how economic costs associated with this proposed rule would not exceed $193 million).
[107] *See, generally,* Section VI.A. (for a discussion of the broad economic considerations with this proposed rule).
[108] *See, specifically*, Section VI.A.3. (for a discussion of regulatory alternatives and their economic costs).

selecting ‘‘Currently Under Review—Open for Public Comments’’ or by using the search function. Comments are welcome and must be received by [insert date 60 days after date of publication in the *Federal Register*].

As noted, certain provisions of the proposed whistleblower rule contain "collection of information" requirements within the meaning of the PRA.[109] In accordance with the requirements of the PRA and its implementing regulations, 5 CFR part 1320, the following details concerning the collections of information are presented to assist those persons wishing to comment. Under the proposed rule, both forms, and any successor forms, would be considered necessary to implement 31 U.S.C. 5323. The forms would allow an individual to voluntarily provide information to Treasury and DOJ regarding (i) potential violations of the covered statutes and (ii) the individual's eligibility and entitlement to receive an award, respectively, and would be titled (1) "Form TCR" and (2) "Form WB-APP," respectively. The hours and costs associated with preparing and submitting information through the forms via the online portal constitute reporting and cost burdens imposed by each collection of information.

Title: Whistleblower Incentives and Protections

OMB Control Number: 1506-XXXX

Frequency: As required.

Description of Affected Public: Individuals

1. Proposed Form TCR

Report: Form TCR

Description: To be eligible to receive an award under FinCEN's whistleblower program, individuals seeking to submit information of a possible violation of a covered statute to Treasury or Justice must do so by providing information and completing the Form TCR through FinCEN's online portal unless another manner is authorized by FinCEN. Proposed Form TCR, as previewed in Appendix A, would be submitted pursuant to the requirements of the proposed rule

[109] 44 U.S.C. 3501 *et seq.*

as described in Section III.B. The form would request information that FinCEN, in consultation with other Treasury offices and Justice, has deemed to be the most useful and necessary to support Treasury and Justice's efforts to enforce the covered statutes.[110] The requests would be grouped into the categories below, which have been listed with the corresponding section reference for where they would be found on the proposed Form TCR.[111] The proposed Form TCR would solicit the following information:

(1) Information about the individual submitting the Form TCR: Section A of the proposed Form TCR solicits background information regarding the individual submitting the Form TCR, including the individual's name, contact information, and occupation.[112]

(2) Information about the individual's attorney: If the individual is represented by an attorney, Section B solicits the name and contact information for the individual's attorney.

(3) Information about the subject of the Form TCR: Section C requests information regarding the individual or entity that is the subject of the tip, complaint, or referral, including contact information.

(4) Information regarding the tip, complaint, or referral: Section D encompasses the informational content and characteristics of the tip, complaint, or referral itself, including the date range of the event being described; whether the whistleblower is complaining about an entity with which they are or were associated as an officer, director, employee, or agent; whether the individual has taken any prior actions regarding the alleged conduct that is the subject of their complaint; facts in support of the allegations; any additional relevant information; a description of all supporting materials; and an explanation of why the allegations described may constitute a violation of the BSA, IEEPA, TWEA, or the Kingpin Act, including U.S. economic sanctions,

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[110] *See supra* Section II.B. (for description of the covered statutes).

[111] Persons who wish to supplement an original Form TCR filing with additional information or other supporting materials would be required to complete and submit another Form TCR via the same online portal, which would then be linked to the originally-submitted Form TCR. The reporting burden that is expected to be associated with the submission of supplementary Form TCR is included in the estimates of the PRA burden under Form TCR.

[112] Proposed Section A also includes the bespoke subseries of questions a whistleblower would be required to complete if submitting a Form TCR to supplement a previously-submitted original Form TCR.

the Data Security Program, or other federal laws or regulation. Section D also provides a link individuals may use to upload any documents they wish to submit with their Form TCR.

(5) Additional information about the individual submitting the Form TCR: Section E solicits additional information about the individual submitting the Form TCR that would help FinCEN assess their future potential eligibility for an award, as well as information about the individual's potential connection, affiliation, or association with the subject of the Form TCR.

Proposed Form TCR includes two additional sections. Section F requires a declaration under penalty of perjury under the laws of the United States that the information provided in Form TCR is true, correct, and complete to the best of the individual's knowledge, information and belief. If the Form TCR is being submitted with the assistance of an attorney, Section G requires certification by that attorney. FinCEN is electing not to include the fields in these sections as part of the reporting burden estimates below because neither the whistleblower nor the whistleblower's attorney, if the whistleblower retains counsel, is required to produce or report information to complete the required fields in either section, respectively. Rather, in each instance, the respondent is simply attesting to the requisite characteristics (*i.e.*, true, correct, and complete to the best of the party's knowledge) of the information provided in the listed sections.[113]

FinCEN notes that while various informational elements are solicited in each of the sections in the numbered list above, only a substantially smaller subset of these elements is proposed to be required in order for respondents to submit a Form TCR.[114] In proposing a form that includes both required and optional informational fields, FinCEN has attempted to balance the intended benefits of the Form TCR as proposed, which provides greater clarity to prospective future whistleblowers on what to include in their tips to make the information more useful and

[113] Attestations and certifications are not considered "information" subject to the requirements of the PRA. *See* 5 CFR 1320.3(h)(1).

[114] As depicted in Table 9, of the 95 questions a whistleblower could respond to when submitting an original submission, only 23-44 distinct questions require a response.

actionable to investigators, with the anticipated costs, which are expected to incrementally increase with the number of informational fields completed. Table 9 presents an overview of the maximum scope of informational fields the proposed Form TCR would be enabled to collect as well as the lower and upper bounds of the minimum required information necessary to complete the proposed form.

Table 9. Number of Distinct Informational Fields in Proposed Form TCR (Original)

Section	Possible n-tuples	Maximum Entries per Question	Total Number of Questions by Number of Possible Entries	Total Required Questions	Maximum Feasible Entries for Required Questions	Maximum Feasible Field Entries
A[a]	1	1	12	2	3	14
		multiple[e]	2	0	n/a	2 x 9 x 99
B[b]	99	1 per 99	7	2	198	693
		multiple[e] per 99	2	2	594	594
C	99	1 per 99	10	3	297	990
		multiple[e] per 99	4	0	n/a	4 x 9 x 99
D	1	1	45	11[b] | 27[c]	11 | 22	45
E	1	1	13	7[b] | 8[c]	7 | 8	13
F	1	1	n/a	n/a	n/a	2
G	1	1	n/a	n/a	n/a	2
Total			95	23[c] | 44[d]	318[c] | 1,127[d]	7,699

[a] Elements of Section A tabulated here exclude questions that are only required in connection with a supplemental submission. See companionate Table 10 for data that pertains to a Form TCR used for a supplemental submission.

[b] Section B is not required for Form TCR submissions prepared without the assistance of an attorney.

[c] This total is based on the minimum requirements for a Form TCR completed without the assistance of an attorney and where no responses to an unconditionally required question engenders a subsequent, conditionally required follow-up question(s).

[d] This total is based on the minimum requirements for a Form TCR completed with the assistance of an attorney and where all responses to unconditionally required questions that would engender a subsequent, conditionally required follow-up question(s).

[e] The assumed maximum number of entries is nine (9) when the option is 'multiple.'

Whistleblowers can also submit supplemental information about claims using the Form TCR. Table 10 provides a similar overview of the maximum scope of informational fields the proposed supplemental Form TCR would be enabled to collect as well as the lower and upper bounds of the minimum required information necessary to complete the proposed form.

Table 10. Number of Distinct Informational Fields in Proposed Form TCR (Supplemental)

Section	Possible n-tuples	Maximum Entries per Question	Total Number of Questions by Number of Possible Entries	Total Required Questions	Maximum Entries for Required Question(s)	Maximum Feasible Field Entries
A[a]	1	1	20	7[b] | 10[c]	7[b] | 10[c]	20
F	1	1	n/a	0	0	2
G	1	1	n/a	0	0	2
Total			20	7[b] | 10[c]	7[b] | 10[c]	24

[a] Elements of Section A tabulated here include questions that are only required in connection with a supplemental submission, as well as the optional fields available to both individuals submitting both original and supplemental submissions.

[b] This total is based on the minimum requirements for a Form TCR completed without the assistance of an attorney and where no responses to an unconditionally required question engenders a subsequent, conditionally required follow-up question(s).

[c] This total is based on the minimum requirements for a Form TCR completed with the assistance of an attorney and where all responses to unconditionally required questions that would engender a subsequent, conditionally required follow-up question(s).

Estimated Number of Annual Responses: 400.

Informed by both its own historical experience receiving tips, quantified primarily through an analysis of submissions received from 2021 to 2024,[115] and the observable historical trends in Form TCR filings submitted to other federal agencies under their own respective whistleblower programs,[116] FinCEN is conservatively estimating the maximum of its expected range of filing volume forecast. This estimate is informed by FinCEN's anticipation that the number of Form TCR submissions it would receive under the proposed whistleblower program would reach approximately 250 original submissions and 150 supplemental submissions annually within three years of the effective date of the whistleblower program's implementing regulations.[117] Among the 250 original submissions, FinCEN expects that 150 of these original

[115] *See supra* Sections V.A.1.a.i. and V.E.1. (discussing FinCEN's current and historical experience receiving tips); *see also* Table 3 (on the historical tip volumes and the estimated number of annual responses forecast after the enhancements to the whistleblower program envisioned by the proposed rule take effect).

[116] FinCEN observes that neither the SEC nor CFTC whistleblower programs received double their first-year Form TCR intake until approximately their fourth year of operations, respectively, and subsequently did not triple their first-year Form TCR intake until an additional four years later.

[117] Because FinCEN OMB control numbers must be renewed at least once every three years, FinCEN has only prepared a forecast for the time horizon until it would, in the course of its regularly scheduled control renewal activity, reassess its original forecast. At that time, FinCEN may revise its expectations, as appropriate, in light of the data accumulated over the three-year period, data-informed changes in future expectations, or comments received from the public via the notice and comment portion of the renewal process.

submissions will be accompanied by a supplemental submission, while 100 of these original submissions will not be accompanied by a supplemental submission.

Estimated Reporting Burden per Response:

The burden associated with the submission of a Form TCR is highly dependent on the facts and circumstances under which it is completed and submitted. In order to estimate the average time per response for an original submission, FinCEN examined multiple scenarios in which respondents would complete either the maximum or minimum number of required fields (see Table 9), and whether or not they would have legal representation. Table 11 provides a breakdown of these estimates in terms of the number of fields completed, while Table 12 provides the same breakdown in terms of completion time. In order to estimate completion times, FinCEN applied an internal analysis which assumed uniform time estimates for each required field depending on its type.

Table 11. Minimum Number of Questions Required to Complete Form TCR (Original)

	No Conditionally Required Questions	All Conditionally Required Questions
Represented by Counsel	27	44
Pro Se	23	40

Table 12. Time to Complete the Minimum Number of Questions Required on Form TCR (Original)

	No Conditionally Required Questions	All Conditionally Required Questions
Represented by Counsel	18 minutes	55.5 minutes
Pro Se	17.5 minutes	55 minutes

FinCEN applied a similar analysis to the completion of the supplemental submission, which provides additional information about an original submission. Table 13 provides a breakdown of these estimates in terms of the number of fields completed, while Table 14 provides the same breakdown in terms of completion time. As before, in order to estimate completion times, FinCEN applied an internal analysis which assumed uniform time estimates for each field depending on its type.

Table 13. Minimum Number of Questions Required to Complete Form TCR (Supplemental)

	No Conditionally Required Questions	All Conditionally Required Questions
Represented by counsel	8	10
Pro se	7	9

Table 14. Time to Complete the Minimum Number of Questions Required on Form TCR (Supplemental)

	No Conditionally Required Questions	All Conditionally Required Questions
Represented by counsel	11 minutes	23 minutes
Pro se	10.5 minutes	22.5 minutes

Estimated Reporting Cost per Response:

This estimated cost per response represents the weighted average of costs per response described in Tables 12 and 14, which assumes that only the range of required fields are completed. Table 15 provides the cost per response for original submissions.

Table 15. Form TCR (Original) Cost per Response

Respondent Type	Time Burden (minutes)	Wage Rate	Cost per Response
Represented by Counsel			
No Conditionally Required Fields	18[a]	$792.94[c]	$238
All Conditionally Required Fields	55.5[b]		$733
Pro Se			
No Conditionally Required Fields	17.5[d]	$133.08[f]	$39
All Conditionally Required Fields	55[e]		$122

[a] *See* Table 12.

[b] *See* Table 12.

[c] The wage rate applied here is the average wage rate for attorneys as found in the "Hourly Rates for Legal Fees for Complex Federal Litigation in the District of Columbia", published by the U.S. Attorney's Office for the District of Columbia, Civil Division.

[d] *See* Table 12.

[e] *See* Table 12.

[f] The wage rate applied here is the hourly wage rate for attorneys ($93.72), scaled by a private-sector benefits factor of 1.42 ($133.08 = $93.72 x 1.42), that incorporates the mean wage data (available for download at https://www.bls.gov/oes/2024/may/oessrci.htm, "May 2024 - National industry-specific and by ownership") associated with the occupational code for "Lawyers" (23-1011) for cross-industry private and public sector workers. The benefit factor is one plus the benefit/wages ratio, where, as of December 2024, Total Benefits = 29.5 and Wages and salaries = 70.5 (29.5/70.5= 0.42) based on the private industry workers series data downloaded from https://www.bls.gov/news.release/pdf/ecec.pdf (accessed Apr. 22, 2025). Given that many occupations provide benefits beyond cash wages (e.g., insurance, paid leave, etc.), the private sector benefit is applied to reflect the total cost to the employer.

Table 16 provides the cost per response for supplemental submissions.

Table 16. Form TCR (Supplemental) Cost per Response

Respondent Type	Time Burden (minutes)	Wage Rate	Cost per Response
Represented by Counsel			
No Conditionally Required Fields	11[a]	$792.94[c]	$145
All Conditionally Required Fields	23[b]		$304
Pro Se			
No Conditionally Required Fields	10.5[d]	$133.08[f]	$23
All Conditionally Required Fields	22.5[e]		$50

[a] *See* Table 14.

[b] *See* Table 14.

[c] The wage rate applied here is the average wage rate for attorneys as found in the "Hourly Rates for Legal Fees for Complex Federal Litigation in the District of Columbia", published by the U.S. Attorney's Office for the District of Columbia, Civil Division.

[d] *See* Table 14.

[e] *See* Table 14.

[f] The wage rate applied here is the hourly wage rate for attorneys ($93.72), scaled by a private-sector benefits factor of 1.42 ($133.08 = $93.72 x 1.42), that incorporates the mean wage data (available for download at https://www.bls.gov/oes/2024/may/oessrci.htm, "May 2024 - National industry-specific and by ownership") associated with the occupational code for "Lawyers" (23-1011) for cross-industry private and public sector workers. The benefit factor is one plus the benefit/wages ratio, where as of December 2024, Total Benefits = 29.5 and Wages and salaries = 70.5 (29.5/70.5= 0.42) based on the private industry workers series data downloaded from https://www.bls.gov/news.release/pdf/ecec.pdf, accessed April 22, 2025. Given that many occupations provide benefits beyond cash wages (e.g., insurance, paid leave, etc.), the private sector benefit is applied to reflect the total cost to the employer.

Estimated Annual Aggregate Burden:

In order to estimate the annual aggregate burden of expected responses to Form TCR, FinCEN finds it reasonable to assume that 50% of respondents will file anonymously, and half of those (25% of all respondents) will do so with an attorney. Of those who do not file anonymously, FinCEN assumes that two-thirds (approximately 33% of all respondents) will do so with an attorney, and one-third (approximately 17% of all respondents) will do so without an attorney. This may or may not represent the distributional characteristics of all Form TCR submissions. FinCEN has included a request for comment on the availability of a more suitable proxy or a more accurate estimate of the distribution.

Table 17 presents the estimated average aggregate annual time burden associated with the maximum number of Form TCR responses expected to be received within the first three years of the proposed rule's effective date.

Table 17. Aggregate Annual Time Burden of Form TCR

Respondent Type	Percentage of Total	Expected Annual Average Number of Responses	Average Time Burden per Response (minutes)[a]	Total Burden by Response Type (minutes)
Original Submission: Represented by Counsel	58%[b]	58	36.75	2,132
Original Submission: Pro Se	42%[c]	42	36.25	1,523
	100%	*100*		
Original + Supplemental Submissions: Represented by Counsel	58%	87	53.75	4,676
Original + Supplemental Submissions: Pro Se	42%	63	52.75	3,323
	100%	*150*		
Supplemental Submission: Represented by Counsel	58%	87	17	1,479
Supplemental: Pro Se	42%	63	16.5	1,040
	100%	*150*		
Total (minutes)		400		14,172
Total (hours)				236.2

[a] Completion time averages are the average between the time required to complete the minimal and maximal number of required fields for each category as described in tables 12 and 14. For example, an original submission from an individual represented by counsel is estimated to take between 18 and 55.5 minutes, or an average of 36.75 minutes.

[b] As described earlier, FinCEN assumes that 25% of all respondents file anonymously with an attorney, and 33% of all respondents file non-anonymously with the assistance of an attorney.

[c] *See* note above.

Estimated Annual Aggregate Cost:

Table 18 presents the estimated average aggregate annual pro forma costs associated with the maximum number of Form TCR responses expected to be received within the first three years of the proposed whistleblower program's effective date. As discussed above, these costs

may reasonably be expected to differ from the reporting costs realized by respondents in practice due to the nature of how legal representation may be compensated.

Table 18. Aggregate Annual Cost of Form TCR

Respondent Type	Expected Annual Average Number of Responses	Average Time Burden per Response (minutes)	Wage Rate	Total Costs by Response Type
Original Submission: Represented by Counsel	58	36.75	$792.94[a]	$28,169
Original Submission: Pro Se	42	36.25	$133.08[b]	$3,377
Original + Supplemental Submissions: Represented by Counsel	87	53.75	$792.94	$61,800
Original + Supplemental Submissions: Pro Se	63	52.75	$133.08	$7,371
Supplemental Submission: Represented by Counsel	87	17	$792.94	$19,546
Supplemental Submission: Pro Se	63	16.5	$133.08	$2,306
Total	400			$122,568

[a] The wage rate applied here is the average wage rate for attorneys as found in the "Hourly Rates for Legal Fees for Complex Federal Litigation in the District of Columbia", published by the U.S. Attorney's Office for the District of Columbia, Civil Division.

[b] The wage rate applied here is the hourly wage rate for attorneys ($93.72), scaled by a private-sector benefits factor of 1.42 ($133.08 = $93.72 x 1.42), that incorporates the mean wage data (available for download at https://www.bls.gov/oes/2024/may/oessrci.htm, "May 2024 - National industry-specific and by ownership") associated with the occupational code for "Lawyers" (23-1011) for cross-industry private and public sector workers. The benefit factor is one plus the benefit/wages ratio, where as of December 2024, Total Benefits = 29.5 and Wages and salaries = 70.5 (29.5/70.5= 0.42) based on the private industry workers series data downloaded from https://www.bls.gov/news.release/pdf/ecec.pdf (accessed Apr. 22, 2025). Given that many occupations provide benefits beyond cash wages (e.g., insurance, paid leave, etc.), the private sector benefit is applied to reflect the total cost to the employer.

2. Proposed Form WB-APP

Report: Form WB-APP

Description: Individuals seeking to apply for a financial award must submit their application by completing the Form WB-APP through FinCEN's online portal. Proposed Form WB-APP, as previewed in Appendix B, would be submitted pursuant to the requirements of the proposed rule as described in subpart D. The form would request information that FinCEN has determined to

be the most useful and necessary when evaluating a claim for an award in connection with a covered action or a related action. The collected information would be grouped into the categories below, which have been listed with the corresponding section reference for where they would be found on the proposed Form WB-APP. The proposed Form WB-APP would solicit the following information:

(1) Information about the award applicant: Section A, as proposed, would solicit information about the applicant who is applying for an award, including the applicant's name, address, and contact information.

(2) Information about the applicant's attorney: If the applicant is represented by an attorney, Section B of the proposed Form WB-APP would solicit the name and contact information for the applicant's attorney. In cases where an applicant submits a Form WB-APP anonymously, the applicant must be represented by an attorney. The form, as proposed, would allow for up to ninety-nine (99) multiples of Section B to be completed in the event that a whistleblower is represented by more than one attorney.

(3) Information about the previously submitted Form TCR to which the Form WB-APP pertains: Section C of the proposed form would request, in part, and require, in other parts, certain details concerning the information contained in the Form TCR, including: (A) whether the information submitted to FinCEN was also submitted to another part of Treasury or Justice, and if so, the date; (B) the subject of the tip, complaint, or referral; (C) the Form TCR reference number; (D) the date the Form TCR was submitted to FinCEN; (E) whether the Form TCR was subsequently supplemented and, if so, (F) information about the supplemental Form TCRs submitted.

(4) Information about any covered action(s): Section D of the proposed form would require the date of the covered action, the case name, and the case number for each covered action to which the Form WB-APP relates. Section D may be completed up to ninety-nine (99) times in the event that an applicant believes their claim relates to multiple covered actions.

(5) Information about any related action(s): If a Form WB-APP were submitted in connection with a related action, Section E of the proposed form would require, in part, and request in part, certain information about the related action(s) to which the claim pertains, including: (A) the name of the agency or organization to which the applicant provided the original information; (B) the case name and number of the related action; (C) whether the information was provided directly, and if so the date the applicant provided this information; (D) the name and contact information for the point of contact at the agency or organization, if known; (E) whether any application for an award, and if so the status of that application; and (F) whether any award was received, and if so, the amount. Section E may be completed up to ninety-nine (99) times in the event that an applicant believes their claim relates to multiple covered actions.

(6) Whistleblower eligibility and other information: Section F of Form WB-APP, as proposed, would require certain information about the whistleblower that could inform a determination about their eligibility for an award. This information includes: (A) select information in the form of binary characteristics about the individual submitting the Form WB-APP; (B) similar select information about certain familial and household members; (C) whether the applicant acquired any information to which the claim pertains from an individual with characteristics identified in (A) and (B); (D) whether the applicant is barred from the proposed whistleblower program; and (E) the details relating to any positive responses to questions included in (A)-(E).

(7) Information about why the applicant believes they are entitled to an award: Section G of Form WB-APP would require the applicant to provide an explanation of the reasons why the applicant believes they are entitled to an award, including any additional information and supporting documents that may be relevant in light of the criteria for determining the amount of an award set forth in 31 U.S.C. 5323 and, as proposed, section 31 CFR 1010.930.

Proposed Form WB-APP, like proposed Form TCR, includes two additional sections. Section H requires a declaration under penalty of perjury under the laws of the United States that the information provided in Form WB-APP is true, correct, and complete to the best of the applicant's knowledge, information and belief. If the Form WB-APP is submitted with the assistance of an attorney, Section I requires certification by that attorney. FinCEN is electing not to include the fields in these sections as part of the reporting burden estimates below because neither the applicant nor their attorney, if retained, is required to produce or report information to complete the required fields in either section, respectively. Rather, in each instance, the applicant is simply attesting to the requisite characteristics (*i.e.*, true, correct, and complete to the best of the signing party's knowledge) of the information provided in the Form WB-APP.[118]

Table 19 presents an overview of the maximum scope of informational fields the proposed Form WB-APP would be enabled to collect as well as the lower and upper bounds of the minimum required information necessary to complete the proposed form.

Table 19. Number of Distinct Informational Fields in Proposed Form WB-APP

Section	Possible n-tuples	Maximum Entries per Question	Total Number of Questions by Number of Possible Entries	Total Required Questions	Maximum Feasible Entries for Required Question(s)	Maximum Feasible Field Entries
A	1	1	7	1	1	7
		multiple[a]	2	0	n/a	18
B[b]	99	1 per 99	7	2	198	693
		multiple[a] per 99	2	2	1782	1782
C	1	1	6	4	4	6
		99	1	0[c] | 1[d]	99	99
D	99	1 per 99	3	3	297	297
E	99	1 per 99	11	1[c] | 4[d]	1 | 396	1089
F	1	1	9	8[c] | 9[d]	8 | 9	9
G	1	1	1	1	1	1
H	1	1	n/a	n/a	n/a	2
I	1	1	n/a	n/a	n/a	2
Total			49	18[e] | 27[f]	410[e] | 2,786[f]	4,005

[118] *See* 5 CFR 1320.3(h)(1).

[a] Calculations that required a finite number for this value assume the maximum number of entries is nine (9) when the option is "multiple."
[b] Section B is not required for Form WB-APP submissions prepared without the assistance of an attorney.
[c] This total is based on the minimum requirements for a Form WB-APP where no responses to an unconditionally required question engenders a subsequent, conditionally required follow-up question(s).
[d] This total is based on the minimum requirements for a Form WB-APP completed when all responses to unconditionally required questions that would engender a subsequent, conditionally required follow-up question(s) do so.
[e] This total is based on the minimum requirements for a Form WB-APP completed without the assistance of an attorney and where no responses to an unconditionally required question engenders a subsequent, conditionally required follow-up question(s).
[f] This total is based on the minimum requirements for a Form WB-APP completed with the assistance of an attorney and where all responses to unconditionally required questions that would engender a subsequent, conditionally required follow-up question(s).

Estimated Number of Annual Responses: 15.

This estimate is based on an estimated tip-to-award application turnover rate of three percent (3%) applied to a rolling annual base of approximately five hundred (500)[119] Form TCRs that takes into account the possibility of up three years in lag time between the date of the Form TCR and corresponding Form WB-APP.

Estimated Burden per Response:

Like the Form TCR, the burden associated with the submission of a Form WB-APP is highly dependent on the facts and circumstances under which it is completed and submitted. In order to estimate the average time per response, FinCEN examined multiple scenarios in which respondents would complete either the maximum or minimum number of required fields (see Table 19), and whether or not they would have legal representation. Table 20 provides a breakdown of these estimates in terms of the number of fields completed, while Table 21 provides the same breakdown in terms of completion time. In order to estimate completion times, FinCEN applied an internal analysis which assumed uniform time estimates for each required field depending on its type.

Table 20. Minimum Number of Questions Required to Complete Form WB-APP

	No Conditionally Required Questions	All Conditionally Required Questions
Represented by Counsel	22	27

[119] 500 is based upon FinCEN's estimate of the number of annual submissions of Form TCR and takes into consideration a number of submissions received to date.

Pro Se	18	23

Table 21. Time to Complete the Minimum Number of Questions Required on Form WB-APP

	No Conditionally Required Questions	All Conditionally Required Questions
Represented by Counsel	10 minutes	16.5 minutes
Pro Se	9.5 minutes	16 minutes

Estimated Reporting Cost per Response:

This estimated cost per response represents the weighted average of costs per response described in Table 22, which assumes that only the range of required fields are completed.

Table 22. Form WB-APP Cost per Response

Respondent Type	Time Burden (minutes)	Wage Rate	Cost per Response
Represented by Counsel			
No Conditionally Required Fields	10[a]	$792.94[c]	$132
All Conditionally Required Fields	16.5[b]		$218
Pro Se			
No Conditionally Required Fields	9.5[d]	$133.08[f]	$21
All Conditionally Required Fields	16[e]		$35

[a] *See* Table 21.

[b] *See* Table 21.

[c] The wage rate applied here is the average wage rate for attorneys as found in the "Hourly Rates for Legal Fees for Complex Federal Litigation in the District of Columbia", published by the U.S. Attorney's Office for the District of Columbia, Civil Division.

[d] *See* Table 21.

[e] *See* Table 21.

[f] The wage rate applied here is the hourly wage rate for attorneys ($93.72), scaled by a private-sector benefits factor of 1.42 ($133.08 = $93.72 x 1.42), that incorporates the mean wage data (available for download at https://www.bls.gov/oes/2024/may/oessrci.htm, "May 2024 - National industry-specific and by ownership") associated with the occupational code for "Lawyers" (23-1011) for cross-industry private and public sector workers. The benefit factor is one plus the benefit/wages ratio, where as of December 2024, Total Benefits = 29.5 and Wages and salaries = 70.5 (29.5/70.5= 0.42) based on the private industry workers series data downloaded from https://www.bls.gov/news.release/pdf/ecec.pdf (accessed Apr. 22, 2025). Given that many occupations provide benefits beyond cash wages (e.g., insurance, paid leave, etc.), the private sector benefit is applied to reflect the total cost to the employer.

Estimated Annual Aggregate Reporting Burden:

The distributional weights applied to estimate the number of responses by respondent type are derived from publicly available historical data on previous whistleblower awards issued

by the SEC and the CFTC.[120] This data suggests that the ratio of awards issued to whistleblowers represented by counsel to whistleblowers without counsel is approximately two (2) to one (1). FinCEN acknowledges that there may be certain limitations to this methodological approach since the data used to derive this distribution only represents situations in which an award was issued. This may or may not represent the distributional characteristics of all initial award applications with comparable accuracy because award applications from whistleblowers with and without legal representation may not be equally likely to result in an award. FinCEN has included a request for comment on the availability of a more suitable proxy or a more accurate estimate of the distribution.

Table 23 presents the estimated average aggregate annual time burden associated with the maximum number of Form WB-APP responses expected to be received within the first three years of the proposed whistleblower program's effective date.

Table 23. Aggregate Annual Time Burden of Form WB-APP

Respondent Type	Expected Annual Average Number of Responses	Average Time Burden per Response (minutes)[a]	Total Burden by Response Type
Represented by Counsel	10[b]	13.25	132.5
Pro Se	5	12.75	63.75
Total (minutes)	15		196.25
Total (hours)			3.27

[a] Completion time averages are the average between the time required to complete the minimal and maximal number of required fields for each category as described in table 21. For example, a Form WB-APP submitted by a respondent who is represented by counsel is estimated to take between 10 and 16.5 minutes, or an average of 13.25 minutes.

[b] As discussed above, FinCEN expects that awards applicants will be represented by counsel on a 2 to 1 basis (2/3). 15/3 x 2 = 10.

Estimated Annual Aggregate Reporting Cost:

Table 24 presents the estimated average aggregate annual pro forma costs associated with the maximum number of Form WB-APP responses expected to be received within the first three years of the proposed rule's effective date. As discussed above, these costs may reasonably be

[120] *See* Platt, A. I., The Whistleblower Industrial Complex, *Yale J. on Reg*. (2023), at 40, 688, Table 2.

expected to differ from the reporting costs realized by respondents in practice due to the nature of how legal representation may be compensated.

Table 24. Aggregate Annual Cost of Form WB-APP

Respondent Type	Expected Annual Average Number of Responses	Average Time Burden per Response (minutes)	Wage Rate	Total Costs by Response Type
Represented by Counsel	10	13.25	$792.94[a]	$1,751
Pro Se	5	12.75	$133.08[b]	$141
Total	15			$1,892

[a] The wage rate applied here is the average wage rate for attorneys as found in the "Hourly Rates for Legal Fees for Complex Federal Litigation in the District of Columbia", published by the U.S. Attorney's Office for the District of Columbia, Civil Division.

[b] The wage rate applied here is the hourly wage rate for attorneys ($93.72), scaled by a private-sector benefits factor of 1.42 ($133.08 = $93.72 x 1.42), that incorporates the mean wage data (available for download at https://www.bls.gov/oes/2024/may/oessrci.htm, "May 2024 - National industry-specific and by ownership") associated with the occupational code for "Lawyers" (23-1011) for cross-industry private and public sector workers. The benefit factor is one plus the benefit/wages ratio, where as of December 2024, Total Benefits = 29.5 and Wages and salaries = 70.5 (29.5/70.5= 0.42) based on the private industry workers series data downloaded from https://www.bls.gov/news.release/pdf/ecec.pdf, accessed April 22, 2025. Given that many occupations provide benefits beyond cash wages (e.g., insurance, paid leave, etc.), the private sector benefit is applied to reflect the total cost to the employer.

Estimated Recordkeeping Cost: $0.10 per covered submission.

As described above, in cases where the applicant submitting the Form WB-APP is represented by an attorney because they wish to remain anonymous, the attorney is required to retain the signed original form.[121] Because FinCEN has not specified the method of retention, it assumes that entities with recordkeeping obligations would choose the most cost-effective method available, and it expects that in most cases this would be achieved by electronic recordkeeping. As such, FinCEN is assigning a $0.10 recordkeeping cost[122] to the proportion of Form WB-APP submissions that are expected to be submitted by attorneys on behalf of applicants.

Estimated Annual Aggregate Recordkeeping Cost: $0.50, on average.

[121] *See* proposed 31 CFR 1010.930(d)(3)(ii)(B).

[122] This estimate conforms to the FinCEN standard estimate of recordkeeping cost associated with processing and saving electronic records. *See* FinCEN, *Anti-Money Laundering Regulations for Residential Real Estate Transfers Final Rule*, 89 FR 70258 (Aug. 29, 2024), at 70287, https://www.federalregister.gov/documents/2024/08/29/2024-19198/anti-money-laundering-regulations-for-residential-real-estate-transfers.

Under the simplified model as described above, FinCEN assumes that applicants submitting a Form WB-APP are equally likely (p = 50%) to be anonymous as named. Applying this assumption to the maximum number of expected Form WB-APP submissions per year from applicants who are represented by an attorney (ten (10)), yields an expected average annual aggregate recordkeeping cost of $ 0.50 (= p x number of applicants x recordkeeping cost per Form WB-APP = 0.5 x 10 x $0.10).

3. Total Annual Burden Estimates

The total annual reporting burden hours and cost estimates are derived from a combination of the estimates for each form type.

Estimated Total Annual Reporting Burden Hours: 239.47 hours

The total annual reporting burden hours is comprised of the total number of hours between the estimates for each form type: Form TCR: 14,172 (236.2 hours); Form WB-APP: 196.25 minutes (3.27 hours).

Estimated Total Annual Reporting and Recordkeeping Costs: $124,461

The total annual reporting and recordkeeping cost is comprised of the total cost between the estimates for each form type: Form TCR: $122,568; Form WB-APP: $1,892.

General Request for Comments under the PRA:

Comments submitted in response to this notice will be summarized and included in a request for OMB approval. All comments will become a matter of public record. Comments are invited on the following categories: (i) the accuracy of the agency's estimate of the burden of the collection of information; (ii) ways to enhance the quality, utility, and clarity of the information to be collected; (iii) ways to minimize the burden of the collection of information on reporting persons, including through the use of technology; and (iv) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

F. Additional Requests for Comment

1. Are there other groups or persons that might reasonably be expected to be affected by the proposed rule that the foregoing assessment has failed to consider? If so, please describe.

2. To what extent would a failure to separately consider the economic interests or effects on these persons cause FinCEN's original assessment to be incomplete or otherwise change the conclusions drawn about the balance of benefits and costs achieved by the proposed rule?

3. Are there additional publicly available sources of data or information that FinCEN should have considered when assessing the anticipated economic significance of the proposed rule? If so, please describe. If possible, please describe the expected manner in which the data or information would change FinCEN's assessment and the anticipated magnitude of such changes.

4. Are there additional publicly available sources of data or information that FinCEN should have considered when assessing the anticipated changes in expenditures by affected parties as a result of the proposed rule? If so, please describe. If possible, please describe the expected manner in which the data or information would change FinCEN's assessment and the anticipated magnitude of such changes.

5. Are there any relevant facts, data, studies, or other factors that would change FinCEN's determination that the proposed rule would not have a significant economic impact on a substantial number of small entities? If so, please provide or describe.

6. Are there additional facts, data, studies, or other factors that would change FinCEN's determination of the distribution of Form TCR and Form WB-APP responses that utilize assistance from an attorney?

7. Are there additional facts, data, studies, or other factors that would change FinCEN's determination of the distribution of Form TCR and Form WB-APP responses in which the whistleblowers chooses to submit these forms anonymously?

List of Subjects in 31 CFR Part 1010

Administrative practice and procedure, Aliens, Authority delegations (Government agencies), Banks and banking, Brokers, Business and industry, Commodity futures, Currency, Citizenship and naturalization, Electronic filing, Federal savings associations, Federal-States relations, Federally recognized tribes, Foreign persons, Holding companies, Indian law, Indians, Insurance companies, Investment advisers, Investment companies, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Small businesses, Securities, Terrorism, Tribal government, Time.

For the reasons set forth in the Supplementary Information section, Chapter X of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1010—GENERAL PROVISIONS

1. The authority citation continues to read as follows:

Authority:12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314, 5316-5336; title III, sec. 314 Pub. L. 107-56, 115 Stat. 307; sec. 2006, Pub. L. 114-41, 129 Stat. 457; sec. 701 Pub. L. 114-74, 129 Stat. 599; sec. 6403, Pub. L. 116-283, 134 Stat. 3388.

2. Revise section 1010.930 to read as follows:

§ 1010.930 Whistleblower Incentives and Protections

(a) *Definitions.* For purposes of this section, unless explicitly stated to the contrary, the following terms have the following meanings:

(1) *Appropriate agency or authority.* A Federal or state government agency or other Federal or state entity with legal authority to bring a judicial or administrative action for noncompliance with law, including the Department of the Treasury, the Department of Justice, any appropriate Federal authority, a state attorney general in connection with any criminal investigation, or any appropriate state regulatory authority.

(2) *Collected*. With respect to monetary sanctions, when monies have been deposited and credited in satisfaction of any order, agreement, or settlement, and (i) in the case of a covered action, the Department of the Treasury confirms such deposit and credit have been processed or (ii) in the case of a related action, FinCEN receives confirmation from the appropriate agency or authority that such deposit and credit have been processed. At FinCEN's discretion and pursuant to an advance or amortizing payment agreement described in 1010.930(e)(2), monetary sanctions may be considered collected when monies are reasonably expected to be deposited and credited in satisfaction of an order, agreement, or settlement in a covered action or related action.

(3) *Covered Action.* Any single judicial or administrative action brought by the Department of the Treasury or the Department of Justice under a covered statute or for a conspiracy to violate a covered statute that has been successfully enforced and results in monetary sanctions exceeding $1,000,000.

(i) In determining whether the required threshold of exceeding $1,000,000 for monetary sanctions has been met, FinCEN will not include any monetary sanctions that the whistleblower agreed to or is ordered to pay.

(ii) Any judicial or administrative action brought by the Internal Revenue Service or pursuant to authority delegated to it in 31 CFR 1010.810(c) and (g) will not be considered a covered action.

(iii) FinCEN may treat as a single covered action any two or more judicial or administrative actions that (A) arise out of substantially the same facts, (B) are successfully enforced at substantially the same time, and (C) may individually result in monetary sanctions less than $1,000,000 each, but which collectively result in monetary sanctions exceeding $1,000,000.

(4) *Covered Statute.* Subchapter II of chapter 53 of title 31, United States Code, chapter 35 or section 4305 or 4312 of title 50, United States Code, or the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901 *et seq*.).

(5) *Independent Analysis.* The evaluation of information, including information that may be generally known or available to the public, by the whistleblower, acting alone or in combination with others, in a manner that results in material insights into or interpretations of the significance of such information that are not generally known or available to the public.

(6) *Independent Knowledge.* Factual information known to the whistleblower that is not exclusively obtained from publicly available sources.

(7) *Monetary Sanctions.* Any monies agreed to or ordered to be paid in a covered action or in a related action, including penalties, fines, settlement payments, disgorgement, and interest. Monetary sanctions do not include forfeiture, restitution, or victim compensation payments.

(8) *Original Information.* Information that:

(i) Is derived from the independent knowledge or independent analysis of a whistleblower;

(ii) Is not known to the Department of the Treasury or to the Department of Justice from any other source, unless the whistleblower is the original source of the information;

(iii) 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 or any other publicly available source, unless the whistleblower is a source of the information; and

(iv) Is provided to the Department of the Treasury or to the Department of Justice for the first time:

(A) After January 1, 2021, for violations of subchapter II of chapter 53 of title 31; or

(B) After December 29, 2022, for violations of chapter 35 or section 4305 or 4312 of title 50, the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901 *et seq*.) and for conspiracies to violate subchapter II of chapter 53 of title 31 or chapter 35 or section 4305 or 4312 of title 50, or the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901 *et seq*.).

(9) *Related Action.* Any judicial or administrative action brought by an appropriate agency or authority and successfully enforced that is based upon the original information

provided by a whistleblower pursuant to this section that led to the successful enforcement of a covered action.

(10) *Successful Enforcement.* A covered or related action that meets the following criteria:

(i) The monetary sanctions resulting from the action have been agreed to or ordered to be paid; and

(ii) The action has been:

(A) Resolved with consent of the parties subject to the action (*e.g.*, by a fully executed and binding consent order, settlement agreement, plea agreement, or other similar mechanism); or

(B) Resolved by a final judgment and all applicable appeals have been exhausted or the time in which to file such appeals has expired.

(11) *Department of the Treasury.* The Department of the Treasury, including FinCEN and the Office of Foreign Assets Control.

(12) *Whistleblower.* Any individual who provides, or any two or more individuals acting jointly who provide, information relating to a violation of a covered statute or a conspiracy to violate a covered statute to the Department of the Treasury or to the Department of Justice, or to the employer of the individual or individuals, including as part of the job duties of the individual or individuals.

(b) *Submission of original information.*

(1) *Procedures for submitting original information*.

(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.

(ii) A whistleblower may submit original information anonymously through an attorney.

(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.

(c) *Whistleblower eligibility.*

(1) *In general*. A whistleblower is eligible for an award if:

(i) The whistleblower voluntarily provided original information;

(ii) The whistleblower was the original source of that original information;

(iii) The whistleblower's original information led to the successful enforcement of a covered action or related action; and

(iv) The whistleblower provides to the Department of the Treasury and the Department of Justice, upon request, certain additional information, including:

(A) Explanations and other assistance to allow the Department of the Treasury and the Department of Justice to evaluate and use the original information that the whistleblower submitted; and

(B) Testimony or other evidence relating to whether the whistleblower is eligible or otherwise satisfies any of the conditions for an award.

(2) *Voluntariness.* A whistleblower's submission of original information is voluntary if it is made prior to any request, inquiry, or demand about a matter related or relevant to the original information in the whistleblower's submission from Congress, any agency or authority, or a self-regulatory organization, to the whistleblower or the whistleblower's attorney or other representative, or in some circumstances to a whistleblower's employer.

(3) *Original source.* A whistleblower is the original source of original information if the original information is derived from the independent knowledge or independent analysis of that whistleblower.

(4) *Original information leading to successful enforcement.*

(i) FinCEN will determine whether original information submitted by the whistleblower has led to the successful enforcement of a covered action or related action.

(ii) FinCEN will consider original information to have led to the successful enforcement of a covered action or related action if the original information:

(A) Was sufficiently specific, credible, and timely to cause an appropriate agency or authority to commence, open, or reopen an examination or investigation, or inquire concerning different conduct as part of a current examination or investigation, and an appropriate agency or authority successfully enforced a covered action or related action based in whole or in part on specific conduct that was the subject of the whistleblower's original information; or

(B) Concerned conduct that was already under examination or investigation by an appropriate agency or authority, and the original information significantly contributed to the successful enforcement of the covered action or related action.

(iii) FinCEN will consider original information to have been submitted by the whistleblower if the whistleblower submitted the original information to FinCEN consistent with paragraph (b) of this section. In the case of a whistleblower who first submits original information to their employer and later reports that same original information to FinCEN consistent with the requirements of paragraph (b) of this section, FinCEN will still consider the original information to have been reported by the whistleblower, even if the employer provides the whistleblower's original information, in any form, to the Department of the Treasury or to the Department of Justice.

(5) *Ineligibility.*

(i) *Employment and criminal history*. A whistleblower is not eligible for an award if the whistleblower:

(A) Is, or was at the time the whistleblower acquired the original information:

(1) A member, officer, employee, or contractor of an appropriate regulatory or banking agency, the Department of the Treasury, the Department of Justice, a law enforcement agency, Congress (including a committee of Congress), or a self-regulatory organization; and

(2) Acting in the normal course of their job duties; or

(B) Is convicted of a criminal violation related to the covered action or related action, for which the whistleblower otherwise could receive an award.

(ii) *Foreign Officials*. A whistleblower is not eligible for an award if the whistleblower is, or was at the time the whistleblower acquired the original information:

(A) A member, officer, employee, or contractor of a foreign government, any political subdivision, department, or agency of a foreign government, or any other foreign financial regulatory authority or law enforcement organization; and

(B) Acting in the normal course of their job duties.

(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.

(iv) *Other bases for ineligibility*. In addition, a whistleblower is not eligible for an award if:

(A) The whistleblower obtained original information:

(1) Through a communication that was subject to attorney-client privilege or the work product doctrine, or a similar legal concept provided for under foreign law, unless the disclosure is otherwise

permitted by the applicable Federal or state law and/or attorney conduct rules;

(2) In connection with the legal representation of a client on whose behalf the whistleblower or the whistleblower's employer or firm provided services, and the whistleblower seeks to use the information for their own benefit, unless the disclosure is otherwise permitted by the applicable Federal or state law and/or attorney conduct rules;

(3) By a means or in a manner that is determined by a United States court to violate Federal or state criminal law; or

(4) From a person who obtained the information in the circumstances described in paragraphs (c)(5)(iv)(A)(1) – (3) of this section, unless the whistleblower is providing FinCEN with information about violations involving that person; or

(B) In the whistleblower's submission, the whistleblower's other dealings with the Department of the Treasury or the Department of Justice, or the whistleblower's dealings with another appropriate agency or authority in connection with a related action, the whistleblower:

(1) Knowingly and willfully makes any false, fictitious, fraudulent, or misleading statement or representation;

(2) Uses any false writing or document, knowing that the writing or document contains any false, fictitious, fraudulent, or misleading statement or entry; or

(3) Knowingly and willfully omits any fact, the omission of which causes other statements or representations made by the whistleblower to be misleading.

(6) *Permanent bar.*

(i) *Reason to bar.* FinCEN may permanently bar from the whistleblower program any individual, or any attorney representing such individual, if:

(A) The individual makes, or causes to be made, at least three applications for an award that FinCEN finds to be frivolous, fraudulent, dishonest, abusive, or lacking a colorable connection between the information submitted to FinCEN and the covered action or related action for which the individual is seeking an award;

(B) The individual makes, or causes to be made, at least three submissions of information that FinCEN finds to be frivolous, fraudulent, dishonest, or abusive; or

(C) The individual is found, directly or indirectly in connection with any submission of information or application made pursuant to the whistleblower program or with respect to any covered action or related action, to have misled or otherwise hindered any appropriate agency or authority, self-regulatory organization, member of Congress, or committee of Congress by:

(1) Knowingly and willfully making any materially false, fictitious, fraudulent, or misleading statement or representation;

(2) Using any false writing or document, knowing that the writing or document contains any materially false, fictitious, fraudulent, or misleading statement or entry; or

(3) Knowingly and willfully omitting any fact, the omission of which causes other statements or representations made by the whistleblower to be misleading.

(ii) *Procedures for issuance*. Before issuing a permanent bar, FinCEN will notify the individual to be permanently barred and afford the individual thirty (30) calendar days to respond in writing. FinCEN will notify the individual of its final determination after the response period ends.

(iii) *Consequences*. An individual who has been permanently barred is not eligible to receive an award, and an attorney who has been permanently barred is not permitted to represent any other individual in connection with the whistleblower program.

(d) *Submission of an award application.*

(1) *Timing.* A whistleblower must submit an application for an award based on a covered action to FinCEN no later than ninety (90) calendar days after the relevant notice of covered action was first published on a Department of the Treasury website. A whistleblower must submit an application for an award based on a related action to FinCEN no later than one hundred and eighty (180) calendar days after either the date on which the relevant notice of covered action was first published on a Department of the Treasury website, or the successful enforcement of that related action, whichever comes later.

(2) *Form.* A whistleblower must submit an application for an award by completing FinCEN's "Application for Award for Original Information Submitted Pursuant to 31 U.S.C. 5323" ("Form WB-APP"), or a successor form.

(3) *Award application based on anonymous submission of original information.* Whistleblowers who anonymously submitted original information may apply for an award on a Form WB-APP, or a successor form, that:

(i) Discloses their identity as the source of the original information previously submitted as described in paragraph (b) of this section; or

(ii) Is submitted anonymously. Whistleblowers who submit an award application anonymously must do so through an attorney and comply with the following requirements:

(A) The whistleblower must provide the whistleblower's attorney with a completed Form WB-APP that is signed under penalty of perjury by the whistleblower before the whistleblower's attorney submits to FinCEN a completed Form WB-APP that does not disclose the whistleblower's identity and is signed solely by the whistleblower's attorney;

(B) The whistleblower's attorney must retain the signed original Form WB-APP; and

(C) Upon FinCEN's request, prior to the payment of an award, the whistleblower's attorney must disclose the identity of the whistleblower to FinCEN by providing the whistleblower's signed original Form WB-APP, and the whistleblower's identity must be verified in a form and manner acceptable to FinCEN.

(4) *Withdrawal.* A whistleblower may withdraw a Form WB-APP by submitting a written request to FinCEN at any time after the Form WB-APP is submitted.

(e) *Award adjudication.* After receipt of an award application:

(1) *Eligible whistleblower*. FinCEN will determine pursuant to paragraph (c) of this section whether the whistleblower is eligible to receive an award.

(2) *Agreements*. Each whistleblower must enter into any confidentiality agreement, and, in appropriate circumstances, any advance or amortizing payment agreement, requested by and in a form acceptable to FinCEN prior to any issuance or payment of an award.

(3) *Amount of award*.

(i) *In general*. FinCEN will make an award to an eligible whistleblower for submission of original information that has led to the successful enforcement of a

covered action or related action in an aggregate amount of not less than ten (10) percent and not more than thirty (30) percent of the collected monetary sanctions imposed in the covered action or related actions. Collected monetary sanctions will not include amounts:

(A) Paid by a whistleblower; or

(B) Paid by an entity whose liability is determined by the Department of the Treasury or the Department of Justice to be based substantially on conduct that the whistleblower directed, planned, initiated, or controlled.

(ii) *Multiple whistleblowers.* If FinCEN makes awards to more than one whistleblower in connection with the same covered action or related action, FinCEN will make separate awards for each whistleblower. The total amount awarded to all whistleblowers in the aggregate will not be less than ten (10) percent or greater than thirty (30) percent of the collected monetary sanctions imposed.

(iii) *Factors affecting award amount.* In determining the specific amount of an award, FinCEN shall, in addition to the provisions set forth in paragraphs (e)(3)(i) and (e)(3)(ii) of this section, consider the following factors in relation to the unique facts and circumstances of each case:

(A) *Significance of information*. The significance of the information provided by the whistleblower to the success of the covered action or related action(s);

(B) *Assistance*. The degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the covered action or related action(s), including by providing additional information in connection with the investigations that led to the covered action or related action;

(C) *Programmatic interest*. The programmatic interest of the Department of the Treasury or the Department of Justice in deterring violations relevant to this part by making awards to whistleblowers;

(D) *Culpability*. The culpability or involvement of the whistleblower in matters associated with the covered action or related action(s);

(E) *Unreasonable reporting delay*. Whether the whistleblower unreasonably delayed reporting the violations;

(F) *Internal compliance or reporting systems*. Whether, and to what extent, the whistleblower or any legal representative of the whistleblower utilized an entity's internal compliance or reporting systems, and whether, and to what extent, the whistleblower undermined or compromised the integrity or effectiveness of an entity's compliance or reporting program; and

(G) *Factors considered by other agencies or organizations*. The lawful considerations and conclusions of an appropriate agency or authority or a self-regulatory organization relating to the whistleblower and the covered action.

(iv) *Certain awards of $15 million or less.* When thirty (30) percent of the monetary sanctions collected in any covered action or related action(s), in the aggregate, is $15 million or less, the award payment to the whistleblower (or to two or more whistleblowers together) will be the maximum allowed, unless the payment of such an award would undermine the integrity or objectives of the whistleblower program. If FinCEN determines paragraph (e)(3)(iv) of this section applies, then FinCEN need not consider all of the factors set forth in paragraphs (e)(3)(iii)(D)-(G) of this section.

(v) *Actions subject to multiple awards programs*. If FinCEN determines that another whistleblower program established by the Federal government or a state government has paid or will pay the whistleblower in connection with the same related action for which the whistleblower is applying to FinCEN for an award, FinCEN may consult with other relevant Federal government or state government agencies and, if ascertainable, may consider:

(A) The nature, scope, and impact of the misconduct charged in the related action, and its relationship to the enforcement of a covered statute or the relevant covered action;

(B) The degree to which the monetary sanctions imposed in the related action arise out of the conduct that was the subject of the covered action;

(C) The existence and substance of agreements or other understandings between the Department of the Treasury or the Department of Justice and the other Federal government or state government agencies; and

(D) Whether the administrators of the other award program have paid or are likely to pay an award in an amount FinCEN deems reasonable, using the factors in paragraph (e)(3)(iii) and (iv) of this section or adopting the reasoning of the other agency, to the whistleblower for the related action.

In light of this consultation and consideration, FinCEN may determine to award less than ten (10) percent of the collected monetary sanctions imposed in the related action where the total amount that has been or may be paid to the whistleblower by FinCEN and the separate whistleblower monetary award program(s) will not be less than ten (10) percent of the collected monetary sanctions imposed in the related action.

(vi) *Related action awards.* FinCEN will only make an award based on a related action when it has sufficient information from which to conclude that the judicial

or administrative action brought by an appropriate agency or authority was based upon the original information provided by a whistleblower that led to the successful enforcement of a covered action.

(4) *Disposition of applications*.

(i) *Preliminary determinations of applications.* FinCEN will inform whistleblowers in writing of the disposition of their applications. A preliminary determination of an application will be sent electronically, by mail, or both, to the whistleblower or the whistleblower's attorney before the delivery of a final determination. The whistleblower will be afforded at least thirty (30) calendar days to respond to a preliminary determination.

(ii) Final determinations of applications. A final determination of an application will be sent electronically, by mail, or both, to the whistleblower or the whistleblower's attorney.

(iii) *Publication of award determinations*. FinCEN will periodically publish its final determinations of awards, related press releases, and other summaries in a manner consistent with the confidentiality requirements of paragraph (f) of this section.

(5) *Availability of funds.* Any payment of an award issued to whistleblowers by FinCEN is subject to amounts available in FinCEN's "Financial Integrity Fund" as described in 31 U.S.C. 5323(b).

(6) *Entitlement to payment*. A recipient of a whistleblower award is entitled to payment on the award only to the extent that a monetary sanction is collected in the covered action or in a related action upon which the award is based.

(7) *Timing of payment*. Payment of a whistleblower award for a monetary sanction collected in a covered action or related action shall be made following the later of:

(i) The date on which the monetary sanction is collected; or

(ii) The completion of the appeals process set forth in paragraph (g) of this section for all whistleblower award claims arising from:

(A) The notice of covered action, in the case of any payment of an award for a monetary sanction collected in a covered action; or

(B) The related action, in the case of any payment of an award for a monetary sanction collected in a related action.

(f) *Confidentiality and protections.*

(1) *Sharing original information with government agencies*. Original information will be made available to the Department of the Treasury and the Department of Justice. FinCEN may also, at its discretion, make original information available to other appropriate agencies and authorities, and/or to foreign law enforcement authorities.

(2) *Confidentiality*.

(i) *In general*. FinCEN shall not disclose any information, including information provided by a whistleblower to FinCEN, that could reasonably be expected to reveal the identity of a whistleblower, except:

(A) When disclosure to a defendant or respondent is required in connection with a public proceeding instituted by any appropriate agency or authority or a foreign law enforcement authority;

(B) When FinCEN determines that it is necessary to accomplish the purposes of a covered statute, it may provide such information to any appropriate agency or authority or a foreign law enforcement authority;

(C) When the disclosure is made pursuant to the Privacy Act of 1974 (5 U.S.C. 552a); or

(D) With the consent of the whistleblower to whom the information pertains.

(ii) *Rule of construction*. Nothing in this section shall be construed to limit the ability of the Department of Justice to present any information, including information provided by a whistleblower to FinCEN, that could reasonably be expected to reveal the identity of a whistleblower, to a grand jury, or to limit the ability of the Department of the Treasury, the Department of Justice, or any appropriate agency or authority to share such evidence with potential witnesses or defendants in the course of an ongoing civil or criminal investigation.

(3) *Prohibition against retaliation.* No employer may, directly or indirectly, discharge, demote, suspend, threaten, blacklist, harass, or in any other manner discriminate against a whistleblower in the terms and conditions of employment or post-employment because of any lawful act done by the whistleblower in taking an action described in 31 U.S.C. 5323(g)(1)(A)-(C). For purposes of this provision, the term "whistleblower" includes any individual who takes, or two or more individuals acting jointly who take, any actions described in 31 U.S.C. 5323(g)(1)(A)-(C).

(4) *Communications with individuals reporting possible violations*. No person may take any action to impede an individual from communicating directly with the Department of the Treasury or the Department of Justice about any possible violations of a covered statute or any potential conspiracies to commit any such offenses. This includes, but is not limited to, discouraging, hindering, or delaying an individual from communicating directly with the Department of the Treasury or the Department of Justice.

(5) *Non-waiver*. The rights and remedies provided for in this regulation may not be waived by any agreement, policy, form, or condition of employment, including by a predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if the agreement requires arbitration of a dispute arising under 31 U.S.C. 5323 or this regulation.

(g) *Appeals*.

(1) *In general.* Any determination made under this part, including whether, to whom, or in what amount to make awards, shall be at FinCEN's discretion. Any final determination made under this part, except the determination of the amount of an award made in accordance with paragraph (e) of this section, may be appealed to the appropriate Court of Appeals of the United States not more than thirty (30) calendar days after the determination is issued by FinCEN.

(2) *Administrative record*. The record on appeal shall only consist of FinCEN's final determination issued to the appellant and the following materials:

(i) The public notice of covered action, which may be published on a Department of the Treasury website, if applicable;

(ii) Tip submissions and applications filed by the appellant;

(iii) The preliminary determination issued to the appellant;

(iv) Materials that were submitted by the appellant in response to the preliminary determination; and

(v) Other materials FinCEN considered:

(A) On or after the issuance of a public notice of covered action in issuing the final or preliminary determination with respect to an appellant's applications; and

(B) On or after the occurrence of any circumstances described in this section with respect to an appellant's permanent bar.

(3) *Information not included in the administrative record*. The administrative record shall not include any pre-decisional or internal deliberative process materials or any materials containing information that is classified, law enforcement sensitive, reported to FinCEN under the Bank Secrecy Act, or is otherwise protected from disclosure. FinCEN may also exclude from the record on appeal any materials that do not relate directly to the appellant when more than one claimant has sought an award based on a single public

notice of covered action. Documents and records held with or solely in the possession of other government agencies are not part of the administrative record.

(h) *No amnesty*. The whistleblower program does not provide amnesty or immunity from any future investigation or prosecution by the Department of the Treasury, the Department of Justice, or any other agency or authority. The fact that a whistleblower may assist in investigations conducted by, or enforcement actions brought by, the Department of the Treasury or the Department of Justice does not preclude the Department of the Treasury, the Department of Justice, or another agency or authority from bringing an action against the whistleblower for their own conduct in connection with violations of a covered statute or other laws.

Andrea M. Gacki,
Director,
Financial Crimes Enforcement Network.

APPENDIX - A

FINANCIAL CRIMES ENFORCEMENT NETWORK

FORM TCR

TIP, COMPLAINT, OR REFERRAL

The single asterisks in the proposed form below indicate required fields that a whistleblower or their attorney must complete for the Form TCR to be submitted. The double or triple asterisks in the proposed form below indicate fields that are conditionally required. For example, if a question is marked with a double asterisk, then a whistleblower or their attorney may be required to answer that question depending on how they answered the preceding question marked with a single asterisk. If a question is marked with a triple asterisk, then a whistleblower or their attorney may be required to answer that question depending on how they answered the preceding question marked with a double asterisk.

A whistleblower may choose to submit a Form TCR to FinCEN anonymously. A whistleblower who chooses to submit a Form TCR to FinCEN anonymously may do so on their own behalf or through an attorney. Whether to retain an attorney when submitting a Form TCR anonymously is the whistleblower's choice – an anonymous whistleblower is not required to retain an attorney to submit a Form TCR anonymously.

[ ] I wish to submit this TCR Form anonymously. [Check if "Yes"]

SECTION A: INFORMATION ABOUT THE WHISTLEBLOWER

*Please select what best describes you? [Whistleblower/Counsel Submitting on the Whistleblower's Behalf]

1. **Last Name

   **First Name

   Middle Initial

2. Street Address and Apartment/Unit #

3. City

4. State/Province

5. ZIP/Postal Code

6. Country

7. Telephone Number(s) [multiple entries allowed; “Telephone Number” options include “Home”, “Mobile” and “Work”]

8. Email Address(es) [multiple entries allowed; “Email Address Type” options include “Personal Email” and “Work Email”]

9. Preferred Method of Communication [insert drop down with preselected options: Telephone, Email]

10. Occupation

11. *Is this complaint related to or associated with a Form TCR that you previously filed with FinCEN? [Yes/No]

12. **Please provide the relevant Form TCR reference number. [insert field for entry of Form TCR reference number]

    a. **Please describe all supplemental facts pertinent to the conduct that is the subject of the tip, complaint, or referral that you previously filed with FinCEN. In your description, provide as much detail as you can to help us investigate the conduct. Please also describe all supplemental evidence in your possession that supports the additional allegations you make in this supplemental submission. [insert free text data entry field].

    b. **Describe how and from whom you obtained the additional information in this supplemental submission, including any hard copy or electronic documentary evidence described above. [insert free text data entry field]

    c. **Please upload any documentary evidence that you wish to submit in support of your supplemental submission at the following link: [insert document upload link]

d. **Was any of this supplemental information obtained by you from an attorney or in a communication where an attorney was present? [Yes/No]

(i) ***Identify such information with as much specificity as possible. [insert free text data entry field]

e. **Was any of this supplemental information obtained by you from a public source? [Yes/No]

(i) ***Identify the source(s) with as much specificity as possible. [insert free text data entry field]

f. **Are you represented by an attorney in connection with this supplemental complaint, or referral? [Yes/No]

(i) ***Please provide the name, country, and telephone number and/or email address for the law firm that represents you. [insert free text data entry field]

[After completing questions 12.a – 12.f, the user should be directed to the declaration and certification at the end of this form.]

13. *Are you jointly submitting this tip, complaint, or referral together with one or more other whistleblowers? [Yes/No]

14. **Please identify the other whistleblower(s) with whom you are jointly submitting this tip, complaint, or referral.

15. *Are you represented by an attorney in connection with this tip, complaint, or referral? [Yes/No]

SECTION B: INFORMATION ABOUT THE WHISTLEBLOWER'S ATTORNEY (If Applicable)

[questions in this section can be repeated up to a total of 99 times]

16. Attorney's Last Name

Attorney's First Name

17. **Law Firm Name

18. Street Address and Apartment/Unit #

19. City

20. State/Province

21. ZIP/Postal Code

22. **Country

23. **Telephone Number(s) [three entries allowed; “Telephone Number” options include “Home”, “Mobile” and “Work”] Please ensure at least 1 but no more than 3 phone numbers are listed.

24. **Email Address(es) [three entries allowed; “Email Address Type” options include “Personal Email” and “Work Email”] Please ensure at least 1 but no more than 3 phone numbers are listed.

SECTION C: TELL US WHO YOUR TIP, COMPLAINT, OR REFERRAL IS ABOUT

[questions in this section can be repeated up to a total of 99 times]

25. Is this an individual or entity? [options include “Individual” and “Entity”]

    a. If an individual, specify profession and title, if known.

26. *Last/Business Name

    *First Name

27. Alternate Names (*e.g.*, aliases, trade names or DBAs) [multiple entries allowed]

28. Street Address and Apartment/Unit #

29. City

30. State/Province

31. ZIP/Postal Code

32. *Country

33. Telephone Number(s) [multiple entries allowed; “Telephone Number” options include “Home”, “Mobile” and “Work”]

34. Email Address(es) [multiple entries allowed; Email “Address Type” options include “Personal Email” and “Work Email”]

35. Internet Address or Website [multiple entries allowed]

36. *Are you, or were you, associated with the individual or entity [Yes/No]?

37. **Please describe how you are, or were, associated with the individual or entity. [insert free text data entry field]

SECTION D: TELL US ABOUT YOUR TIP, COMPLAINT, OR REFERRAL

38. *Approximately when did the conduct begin? [mm/dd/yyyy]

39. *Is the conduct ongoing [Yes/No/Don't Know]?

40. **Approximately when did the conduct end? [mm/dd/yyyy]

41. Please select the option(s) that best describe the nature of your tip:

a. [ ] Violations or evasion of U.S. economic sanctions (*e.g.*, economic sanctions programs administered by the Office of Foreign Assets Control or OFAC)

[If the user selects 41.a, they should be directed to fill out 42a-f and 43a-w.]

b. [ ] Violations of the Bank Secrecy Act (BSA).

[If the user selects 41.a, they should be directed to fill out 44a-j and 45a-p.]

c. [ ] Violations of the Data Security Program (enacted at 28 CFR Part 202 to implement Executive Order 14117, "Preventing Access to Americans' Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern").

[If the user selects 41.c, they should be directed to fill out 46a-j, 47a-e and 48a-h.]

d. [ ] Violations of the U.S. Department of the Treasury's Outbound Investment Security Program regulations (enacted at 31 CFR Part 850 to implement

Executive Order 14105, "Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern").

e. [ ] If your tip does not fit into any of the above-described categories, then please describe below: [insert free text data entry field]

42. If you selected "Violations or evasion of U.S. economic sanctions (*e.g.*, economic sanctions programs administered by the Office of Foreign Assets Control or OFAC)", please select the option(s) that best describe the sanctions program to which your tip relates:

a. [ ] Counter-Narcotics

b. [ ] Iran

c. [ ] Specifically Designated Global Terrorists

d. [ ] Democratic People's Republic of Korea

e. [ ] Venezuela

f. [ ] Russia / Ukraine

g. [ ] If your tip does not fit into any of the above-described categories, then please describe below: [insert free text data entry field]

43. If you selected "Violations or evasion of U.S. economic sanctions (*e.g.*, economic sanctions programs administered by the Office of Foreign Assets Control or OFAC)", please select the option(s) that best describe the industry to which your tip relates:

a. [ ] Agriculture

b. [ ] Aviation

c. [ ] Broker Dealers

d. [ ] Construction

e. [ ] Crypto/Digital Assets

f. [ ] Defense

g. [ ] Education and University

h. [ ] Energy (oil, gas, electrical)

i. [ ] Other Financial institutions

j. [ ] Healthcare and pharmaceutical

k. [ ] Humanitarian and NGO

l. [ ] Investment Advisers Registered with the S.E.C.

m. [ ] Lobbying

n. [ ] Manufacturing

o. [ ] Mining

p. [ ] Investment Advisers not Registered with the S.E.C.

q. [ ] Shipping or Logistics

r. [ ] Small Arms

s. [ ] Software, Internet & Data Processing

t. [ ] Telecommunications

u. [ ] Tourism

v. [ ] Transportation

w. [ ] If your tip does not fit into any of the above-described categories, then please describe below: [insert free text data entry field]

44. If you selected "Violations of the Bank Secrecy Act (BSA)", please select the option(s) that best describe the nature of the Bank Secrecy Act (BSA) Violations.

a. [ ] A financial institution that is required by the BSA to file Currency Transaction Reports (CTRs) has not filed these reports and is not making an effort to file them.

b. [ ] A financial institution that is required by the BSA to file Suspicious Activity Reports (SARs) has not filed these reports and is not making an effort to file them.

c. [ ] A financial institution or other person that is required by the BSA to file other reports (*e.g.*, IRS/FinCEN Form 8300: Report of Cash Payments Over $10,000 Received in a Trade or Business; Currency and Other Monetary Instrument Report, also known as a CMIR: Report of International Transportation of Monetary Instruments Over $10,000), has not filed these reports and is not making an effort to file them.

d. [ ] Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) program failure(s) by a financial institution (*e.g.*, failures relating to internal policies, procedures, and controls; designation of an AML officer; employee training; independent testing; and customer due diligence or CDD).

e. [ ] An attempt by an individual or entity to evade Anti-Money Laundering (AML) reporting requirements by interfering with a financial institution's reporting requirements, or structuring or assisting in structuring any transaction involving one or more U.S. financial institutions.

f. [ ] Failure by an individual or entity to comply with a Geographic Targeting Order (GTO).

g. [ ] Failure by an individual or entity to register with FinCEN as a Money Services Business (MSB).

h. [ ] Individual or entity that caused, or attempted to cause, evasion of a BSA reporting requirement.

i. [ ] Money laundering and/or terrorist financing by a financial institution.

j. [ ] None of the above.

45. If you selected "Violations of the Bank Secrecy Act (BSA)" by a financial institution,[123] please select the option(s) that best describes the type of institution at which the conduct occurred:

a. [ ] Broker-Dealer (B-D)

b. [ ] Casino

c. [ ] Card Club

d. [ ] Depository Institution (*e.g.*, bank or credit union)

e. [ ] Dealer in Precious Metals, Precious Stones, or Jewels

f. [ ] Futures Commission Merchant (FCM)

g. [ ] Housing Government Sponsored Enterprise (GSE)

h. [ ] Insurance Company

i. [ ] Introducing Broker (IB)

j. [ ] Loan or Finance Company

k. [ ] Money Services Business (*e.g.*, currency dealer or exchanger, check casher, money transmitter)

l. [ ] Mutual Fund

m. [ ] Operator of Credit Card Systems

p. [ ] If type of institution at which the conduct occurred does not fit into any of the above-described categories, then please describe below: [insert data entry field]

[123] If the Form TCR relates solely to potential violations of IEEPA, TWEA, or the Kingpin Act (*i.e.*, there are no potential violations of the BSA) and the subject of the Form TCR alleged to have committed such potential violations is a financial institution, this question could be completed to indicate the type of financial institution that has committed the potential violation. Similarly, for a Form TCR involving a potential violation of the BSA allegedly committed by a non-financial entity (*e.g.*, violations of the requirement to file Form 8300 by a non-financial trade or business), information about the entity type could be provided in response to the BSA-related question below.

46. If you selected “Violations of the Data Security Program”, please select the option(s) that best describes the data security program prohibitions and/or restrictions to which your tip relates:

a. [ ] 28 CFR § 202.301(a) (prohibited data-brokerage transactions)

b. [ ] 28 CFR § 202.302(a) (other prohibited data-brokerage transactions involving potential onward transfer to countries of concern or covered persons)

c. [ ] 28 CFR § 202.303 (prohibited human ‘omic data and human biospecimen transactions)

d. [ ] 28 CFR § 202.304 (prohibited evasions, attempts, causing violations, and conspiracies)

e. [ ] 28 CFR § 202.305 (knowingly directing prohibited or restricted transactions)

f. [ ] 28 CFR § 202.401(a) (authorization to conduct restricted transactions)

g. [ ] 28 CFR § 202.302(b) (reports of known or suspected violations of § 202.302(a))

h. [ ] 28 CFR § 202.1103 (annual reports arising from certain cloud-related transactions)

i. [ ] Other reporting, recordkeeping, compliance, and/or audit requirements of the data security program

j. [ ] If your tip does not fit into any of the above-described categories, then please describe below: [insert free text data entry field]

47. If you selected “Violations of the Data Security Program”, please select the option(s) that best describes the “covered data transaction” to which your tip relates:

a. [ ] Data brokerage

b. [ ] A vendor agreement

c. [ ] An employment agreement

d. [ ] An investment agreement

e. [ ] If your tip does not fit into any of the above-described categories, then please describe below: [insert free text data entry field]

48. If you selected "Violations of the Data Security Program", please select the option(s) that best describes the "countries of concern" and/or "covered persons" to which your tip relates:

a. [ ] China

b. [ ] Iran

c. [ ] Venezuela

d. [ ] Cuba

e. [ ] North Korea

f. [ ] Russia

g. [ ] Covered Person(s): [insert free text data entry field]

h. [ ] If your tip does not fit into any of the above-described categories, then please describe below: [insert free text data entry field]

49. If you selected "Violations of the Data Security Program", please select the option(s) below that best describes the type of "sensitive personal data" and/or "government-related data" to which your tip relates:

a. [ ] Human 'omic data (including human genomic data)

b. [ ] Biometric identifiers

c. [ ] Precise geolocation data

d. [ ] Personal health data

e. [ ] Personal financial data

f. [ ] Covered personal identifiers

g. [ ] Government-related data (sensitive personal data marketed as linked or linkable to current or recent former employees or contractors, or former senior officials, of the United States Government, including the military and Intelligence Community)

h. [ ] Government-related data (precise geolocation data within any area enumerated on the Government Related Location Data List in § 202.1401)

i. [ ] If your tip does not fit into any of the above-described categories, then please describe below: [insert free text data entry field]

50. If you selected "Violations of the Data Security Program", please select the option(s) below that best describes the volume of "sensitive personal data" and/or "government-related data" to which your tip relates:

a. [ ] 0-999 U.S. persons (or U.S. devices)

b. [ ] 1,000-9,999 U.S. persons (or U.S. devices)

c. [ ] 10,000-99,999 U.S. persons (or U.S. devices)

d. [ ] 100,000+ U.S. persons (or U.S. devices)

e. [ ] If your tip does not fit into any of the above-described categories, then please describe below: [insert free text data entry field]

51. Did the conduct involve virtual currency [Yes/No]?

52. *To your knowledge, has the individual or entity that engaged in the conduct acknowledged their fault? [Yes/No]

53. **Please describe how and when the individual or entity acknowledged their fault? [insert free text data entry field]

54. *Please describe all facts pertinent to the conduct that is the subject of your tip, complaint, or referral. In your description, provide as much detail as you can to help us investigate the conduct. Please also explain why you believe the conduct you describe constitutes a violation of the Bank Secrecy Act or other regulations

administered by FinCEN, U.S. economic sanctions, the Data Security Program, or other federal laws or regulations. [insert free text data entry field]

55. *Please describe all evidence in your possession that supports the allegations you make in your tip, complaint, or referral. [insert free text data entry field].

56. Please upload any documentary evidence that you wish to submit in support of your submission.

Accepted File Types Are:

- Word
- PowerPoint
- Excel
- PDFs
- JPEG
- PNG
- ZIP

Individual File Size is limited to 50mb

[insert document upload link]

57. Please describe the availability and location of any additional evidence that supports your allegations but is not in your possession. In your description, provide as much detail as you can about the location of any such evidence. Also state whether you are aware of any policies or procedures, or other circumstances, which may result in the deletion or destruction of the additional evidence and, if so, the approximate date by which the additional evidence may be deleted or destroyed. [insert free text data entry field]

58. *Describe how and from whom you obtained the information that supports your complaint, including any hard copy or electronic documentary evidence described above. [insert free text data entry field]

59. *Was any information obtained by you through a communication that was subject to attorney-client privilege or the work product doctrine, of a similar legal concept? [Yes/No]

60. **Identify such information with as much specificity as possible. [insert free text data entry field]

a. **To your knowledge, is the disclosure of this communication permitted by Federal or state law and/or attorney conduct rules. [Yes/No/Don't Know]

b. ***Please describe why you believe the disclosure of this communication is permitted? [insert free text data entry field]

61. *Was any information obtained by you from a public source? [Yes/No]

62. **Identify the public source(s) with as much specificity as possible. [insert free text data entry field]

63. Identify any documents or other information in your submission that you believe could reasonably be expected to reveal your identity. Explain the basis for your belief that your identity would be revealed if the documents or information were disclosed to a third party. [insert free text data entry field]

64. *Have you or your counsel had any prior communication(s) with FinCEN concerning this tip, complaint, or referral? [Yes/No]

65. **Please provide the name and contact information for the FinCEN staff member with whom you or your counsel communicated. [insert free text data entry field]

a. **Please provide the date you or your counsel first communicated with FinCEN staff regarding this tip, complaint, or referral. [mm/dd/yyyy]

66. *Have you or your counsel had any prior communication(s) with anyone else at the Department of the Treasury, including OFAC, concerning this tip, complaint, or referral? [Yes/No]

67. **Please provide the name and contact information for the Department of the Treasury staff member with whom you or your counsel communicated. [insert free text data entry field]

    a. **Please provide the date you or your counsel first communicated with Department of Treasury staff regarding this tip, complaint, or referral. [mm/dd/yyyy]

68. *Have you or you counsel had any prior communication(s) with the Department of Justice concerning this tip, complaint, or referral? [Yes/No]

69. **Please provide the name and contact information for the Department of Justice staff member with whom you or your counsel communicated. [insert free text data entry field]

    a. **Please provide the date you or your counsel first communicated with Department of Justice staff regarding this tip, complaint, or referral. [mm/dd/yyyy]

70. *Have you or your counsel provided the information about your tip, complaint, or referral to any other agency or organization, or has any other agency or organization requested the information or related information from you? [Yes/No]

71. **Please identify each agency or organization and provide the name(s) and contact information for your point(s) of contact, if known. [insert free text data entry field]

72. **Also please provide details about any communications you had with each agency or organization, including but not limited to: type of contact, information shared, approximate dates of contact, and tracking code(s). [insert free text data entry field]

73. *Does this tip, complaint, or referral relate to an entity of which you are or were an officer, director, employee, or agent—including attorney, consultant, or contractor? [Yes/No]

74. **Did you report the information about your tip, complaint, or referral to your supervisor, or to the entity's compliance office, whistleblower hotline, ombudsman, or any other available mechanism at the entity for reporting violations? [Yes/No]

75. ***When did you first report the information? [mm/dd/yyyy]

76. ***Please provide additional details about any reports you made, including how you made your report, the names and titles of the individual(s) with whom you made your report, and the information you shared. [insert free text data entry field]

77. Have you or, to your knowledge, anyone else taken any other action regarding the alleged conduct in this complaint, including, for example, complaining to law enforcement or initiating legal action, mediation, or arbitration? [Yes/No]

78. **Please provide details, including a description of the actions taken, who took the actions, and approximate dates on which the actions were taken. [insert free text data entry field]

SECTION E: ADDITIONAL INFORMATION ABOUT THE WHISTLEBLOWER

79. *Are you, or were you at the time you acquired the original information you are submitting to FinCEN, acting in the normal course of your duties as a member, officer, employee, or contractor of: the Department of the Treasury; the Department of Justice; a federal regulatory or banking agency; a law enforcement agency; Congress or a committee of Congress; a self-regulatory organization (*e.g.*, the Financial Industry Regulatory Authority or FINRA, the self-regulatory

organization for the U.S. securities market);any state attorney general office; or any state regulatory authority or examiner? [Yes/No]

80. *Are you, or were you at the time you acquired the original information you are submitting to FinCEN, acting in the normal course of your job duties as a member, officer, employee, or contractor of a foreign government, any political subdivision, department, or agency of a foreign government, or any other foreign financial regulatory authority or law enforcement organization? [Yes/No]

81. *Are you, or were you, at the time you acquired the original information you are submitting to FinCEN, serving as internal audit or internal compliance personnel for the subject of the tip, complaint, or referral? [Yes/No]

    a. **Please describe your position. [insert free text data entry field]

82. *Are you, or were you, at the time you acquired the original information you are submitting to FinCEN, serving as external audit or external consulting personnel for the subject of the tip, complaint, or referral? [Yes/No]

    a. **Please describe your position. [insert free text data entry field]

83. *Have you, your employer, or anyone representing you, received any request, inquiry, demand, or communication that relates to the subject matter of your tip, complaint, or referral:

- From FinCEN, OFAC, any other part of the Department of the Treasury or the Department of Justice;
- in connection with an investigation, inspection or examination by a regulator tasked with examination under the Bank Secrecy Act or any self-regulatory organization; or
- in connection with an investigation by Congress, or any other federal regulatory or banking agency, a state attorney general, or state regulatory authority or examiner? [Yes/No/Don’t Know]

84. *To your knowledge, are you under criminal investigation by state or federal law enforcement authorities or have you been charged with a state or federal crime? [Yes/No]

85. *Have you been convicted of a crime in connection with the information that you are submitting to FinCEN? [Yes/No]

86. *Is your spouse, parent, child, or sibling a member, officer, employee, or contractor of the Department of the Treasury (including FinCEN or OFAC) or the Department of Justice, or do you reside in the same household as a member, officer employee, or contractor of the Department of the Treasury (including FinCEN or OFAC) or the Department of Justice? [Yes/No]

87. *Did you acquire the information that you are submitting to FinCEN from any of the following persons:

- a member, officer, employee, or contractor of: the Department of the Treasury; the Department of Justice; a federal regulatory or banking agency; a law enforcement agency; Congress or a committee of Congress; a self-regulatory organization (*e.g.*, the Financial Industry Regulatory Authority or FINRA, the self-regulatory organization for the U.S. securities market); any state attorney general office; or any state regulatory authority or examiner;
- a member, officer, or employee of a foreign government, any political subdivision, department, or agency of a foreign government, or any other foreign financial regulatory authority or law enforcement organization;
- an individual serving as internal audit or internal compliance personnel for the subject of the tip, complaint, or referral;
- an individual serving as external audit or external consulting personnel for the subject of the tip, complaint, or referral;

- an individual or entity that received any request, inquiry, demand, or communication that relates to the subject matter of your tip, complaint, or referral: from FinCEN, OFAC, any other part of the Department of the Treasury or the Department of Justice; in connection with an investigation, inspection or examination by a regulator tasked with examination under the Bank Secrecy Act or any self-regulatory organization; or in connection with an investigation by Congress, any other federal regulatory or banking agency, a state attorney general, or state regulatory authority or examiner;
- an individual under criminal investigation by state or federal law enforcement authorities or charged with a state or federal crime;
- an individual convicted of a crime in connection with the information that you are submitting to FinCEN;
- an individual whose spouse, parent, child, or sibling is a member, officer, employee, or contractor of the Department of the Treasury (including FinCEN or OFAC) or the Department of Justice, or who resides in the same household as a member, officer employee, or contractor of the Department of the Treasury (including FinCEN or OFAC) or the Department of Justice? [Yes/No]

88. *Are you permanently barred from participating in FinCEN's whistleblower program? [Yes/No]**If you answered "Yes" to any of the questions in this section, "SECTION E: ADDITIONAL INFORMATION ABOUT THE WHISTLEBLOWER", please provide specific details relating to your responses. [insert free text data entry field]

SECTION F: WHISTLEBLOWER'S DECLARATION

I declare under penalty of perjury under the laws of the United States of America that the information contained herein is true, correct, and complete to the best of my knowledge, information and belief. I fully understand that I may be subject to prosecution and ineligible for a

whistleblower award if, in my submission of information, my other dealings with the Financial Crimes Enforcement Network (FinCEN), any other part of the Department of the Treasury, or the Department of Justice, or my dealings with another authority in connection with a related action, I knowingly and willfully: make any false, fictitious, or fraudulent statements or representations; use any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry; or omit any material fact, where, in the absence of such fact, other statements or representations I made would be materially misleading.

Whistleblower Declared Name:

Whistleblower Declared Date: [mm/dd/yyyy]

SECTION G: COUNSEL CERTIFICATION (If Applicable)

I certify that I have reviewed this form for completeness and accuracy and that the information contained herein is true, correct and complete to the best of my knowledge, information and belief.

I further certify that I have verified the identity of the whistleblower on whose behalf this form is being submitted by viewing the whistleblower's valid, unexpired government issued identification (e.g., driver's license, passport). I agree to retain a copy of the form that is filed, have the whistleblower sign that copy, and retain that signed copy of the form in my records.

I further certify that I have obtained the whistleblower's non-waivable consent to provide the Financial Crimes Enforcement Network (FinCEN), with the copy of the form signed by the whistleblower upon FinCEN's request.

Name of Attorney and Law Firm:

Counsel Certified Date: [mm/dd/yyyy]

DISCLAIMER: Now is your only opportunity to download and save a copy of your completed Form TCR for your records. FinCEN will not provide a copy of this completed form at a later

date. If you would like to download and save your completed Form TCR for your records, please click on the link below at this time: Print/Save Form TCR as PDF.

[ ] *I acknowledge that I have downloaded my Form TCR or am choosing not to have a copy of my Form TCR. [check if "Yes"]

APPENDIX - B

FINANCIAL CRIMES ENFORCEMENT NETWORK

FORM WB-APP

APPLICATION FOR AWARD FOR ORIGINAL INFORMATION SUBMITTED

PURSUANT TO 31 U.S.C. § 5323

The single asterisks in the proposed form below indicate required fields that a whistleblower or their attorney must complete for the Form TCR to be submitted. The double asterisks in the proposed form below indicate fields that are conditionally required. For example, if a question is marked with a double asterisk, then a whistleblower may be required to answer that question depending on how the whistleblower answered the preceding question marked with a single asterisk.

A whistleblower may choose to submit a Form WB-APP to FinCEN anonymously. If the applicant also submitted their Form TCR anonymously, they must be represented by an attorney .

[ ] *I wish to submit this Form WB-APP anonymously. [Check if "Yes"]

SECTION A: INFORMATION ABOUT THE WHISTLEBLOWER

*Please select what best describes you? [Whistleblower/Counsel Submitting on the Whistleblower's Behalf]

1. **Last Name

   **First Name

   Middle Initial

2. Street Address and Apartment/Unit #
3. City
4. State/Province
5. ZIP/Postal Code
6. Country

7. Telephone Number(s) [multiple entries allowed; “Number Type” options include “Home”, “Mobile” or “Work”]
8. Email Address(es) [multiple entries allowed; “Email Address Type” options include “Personal Email” and “Work Email”]
9. *Are you represented by an attorney in connection with this award application? [Yes/No]

SECTION B: INFORMATION ABOUT THE WHISTLEBLOWER’S ATTORNEY (If Applicable)

[questions in this section can be repeated up to a total of 99 times]

10. Attorney’s Last Name

    Attorney’s First Name
11. **Law Firm Name
12. Street Address and Apartment/Unit #
13. City
14. State/Province
15. ZIP/Postal Code
16. **Country
17. **Telephone Number(s) [three entries allowed; “Number Type” options include “Home”, “Mobile” or “Work”]
18. **Email Address(es) [three entries allowed; “Email Address Type” options include “Personal Email” and “Work Email”]

SECTION C: TELL US ABOUT YOUR TIP, COMPLAINT, OR REFERRAL

19. *What is your Form TCR reference number?
20. *Prior to submitting your original information to FinCEN and receiving a Form TCR reference number, did you submit the same information to the Department of Justice and/or another part of Treasury? [Yes/No]

a. **What was the date of the initial submission to the Department of Justice and/or another part of Treasury?

21. *When did you first submit your Form TCR? [mm/dd/yyyy]
22. *Did you submit any supplemental information to FinCEN? [Yes/No]
23. **When did you submit your supplemental information? [mm/dd/yyyy]

    [this question can be repeated up to a total of 99 times]
24. *Please provide the name(s) of the individual(s) and/or entity(s) to which your tip, complaint, or referral relates. [insert free text data entry field]

SECTION D: COVERED ACTIONS

[questions in this section can be repeated up to a total of 99 times]

Please submit a covered action to proceed to the next step. A covered action is required for an award to be granted.

25. *What is the date of the covered action to which your claim relates? [mm/dd/yyyy]
26. *Case Name
27. *Case Number

SECTION E: RELATED ACTIONS

[questions in this section can be repeated up to a total of 99 times]

If your claim pertains to a related action, please add the related action to this table. If you do not have a related action to add, please select "No" to proceed.

28. *Does your claim pertain to a related action? [Yes/No]
29. **What is the name of the agency or authority that brought the related action? [insert free text data entry field?]
30. **Case Name
31. **Case Number

32. *Did you submit original information directly to this agency or authority? [Yes/No]
33. **When did you submit your original information directly to this agency or authority? [mm/dd/yyyy]
34. **Please identify your point(s) of contact at this agency or authority and their contact information. [insert free text data entry field]
35. *Have you applied for an award from this agency or authority based on the related action? [Yes/No]
36. **Has the award application been resolved? [Yes/No]
37. **Did you receive an award? [Yes/No]
38. **What was the amount of the award you received? [insert free text data entry field]

SECTION F: ELIGIBILITY AND OTHER INFORMATION

39. *Are you, or were you at the time you acquired the original information you submitted to FinCEN, a member, officer, employee, or contractor of: the Department of the Treasury; the Department of Justice; a federal regulatory or banking agency; a law enforcement agency; Congress or a committee of Congress; a self-regulatory organization (*e.g.*, the Financial Industry Regulatory Authority or FINRA); any state attorney general office; or any state regulatory authority or examiner? [Yes/No]
40. *Are you, or were you at the time you acquired the original information you submitted to FinCEN, a member, officer, or employee of a foreign government, any political subdivision, department, or agency of a foreign government, or any other foreign financial regulatory authority or law enforcement organization? [Yes/No]

41. *Before you submitted your original information to FinCEN, had you, your employer, or anyone representing you, received any request, inquiry, demand, or communication that relates to the subject matter of your tip, complaint, or referral:
    - from FinCEN, another part of the Department of the Treasury, or the Department of Justice;
    - in connection with an investigation, inspection or examination by a regulator tasked with examination under the Bank Secrecy Act or any self-regulatory organization; or
    - in connection with an investigation by Congress, any other federal regulatory or banking agency, a state attorney general, or state regulatory authority or examiner? [Yes/No]
42. *To your knowledge, are you under criminal investigation by state or federal law enforcement authorities or have you been charged with a state or federal crime? [Yes/No]
43. *Have you been convicted of a crime in connection with the information that you submitted to FinCEN? [Yes/No]
44. *Is your spouse, parent, child, or sibling a member, officer, employee, or contractor of the Department of the Treasury (including FinCEN or OFAC) or the Department of Justice, or do you reside in the same household as a member, officer employee, or contractor of the Department of the Treasury (including FinCEN or OFAC) or the Department of Justice? [Yes/No]
45. *Did you acquire the information that you submitted to FinCEN from any of the following persons:
    - a member, officer, employee, or contractor of: the Department of the Treasury; the Department of Justice; a federal regulatory or banking agency; a law enforcement agency; Congress or a committee of Congress;

a self-regulatory organization (*e.g.*, the Financial Industry Regulatory Authority or FINRA); any state attorney general office; or any state regulatory authority or examiner;

- a member, officer, or employee of a foreign government, any political subdivision, department, or agency of a foreign government, or any other foreign financial regulatory authority or law enforcement organization;
- an individual or entity that received any request, inquiry, demand, or communication that relates to the subject matter of your tip, complaint, or referral: from FinCEN, another part of the Department of the Treasury, or the Department of Justice; in connection with an investigation, inspection or examination by a regulator tasked with examination under the Bank Secrecy Act or any self-regulatory organization; or in connection with an investigation by Congress, any other federal regulatory or banking agency, a state attorney general, or state regulatory authority or examiner;
- an individual under criminal investigation by state or federal law enforcement authorities or charged with a state or federal crime;
- an individual convicted of a crime in connection with the information that you submitted to FinCEN; and/or

- an individual with a spouse, parent, child, or sibling who is a member, officer, employee, or contractor of the Department of the Treasury (including FinCEN or OFAC) or the Department of Justice, or who resides in the same household as a member, officer employee, or contractor of the Department of the Treasury (including FinCEN or OFAC) or the Department of Justice?

  [Yes/No]

46. *Are you permanently barred from participating in FinCEN's whistleblower program? [Yes/No]**If you answered "Yes" to any of Questions in "SECTION

F: ELIGIBILITY AND OTHER INFORMATION", please provide specific details relating to your responses. [insert free text data entry field]

SECTION G: ENTITLEMENT TO AN AWARD

47. *Explain the basis for your belief that you are entitled to an award in connection with your submission of information to FinCEN, or to another agency or authority in a related action. Provide any additional information that you think may be relevant considering the criteria for determining the amount of an award set forth in 31 U.S.C. § 5323 and 31 CFR Part 1010.930. Include references to any supporting documents in your possession, custody, or control. [insert free text data entry field]
48. Please upload any documents that you wish to submit in support of your application for an award.

    Accepted File Types Are:

    - Word
    - PowerPoint
    - Excel
    - PDFs
    - JPEG
    - PNG
    - ZIP

    Individual File Size is limited to 50mb

    [insert document upload link]

SECTION H: WHISTLEBLOWER'S DECLARATION

I declare under penalty of perjury under the laws of the United States of America that the information contained herein is true, correct, and complete to the best of my knowledge, information and belief. I fully understand that I may be subject to prosecution and ineligible for a

whistleblower award if, in my submission of information, my other dealings with the Financial Crimes Enforcement Network (FinCEN), any other part of the Department of the Treasury, or the Department of Justice, or my dealings with another authority in connection with a related action, I knowingly and willfully: make any false, fictitious, or fraudulent statements or representations; use any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry; or omit any material fact, where, in the absence of such fact, other statements or representations I made would be materially misleading.

Whistleblower Declared Name:

Whistleblower Declared Date: [mm/dd/yyyy]

SECTION I: COUNSEL CERTIFICATION (If Applicable)

I certify that I have reviewed this form for completeness and accuracy and that the information contained herein is true, correct, and complete to the best of my knowledge, information, and belief.

I further certify that I have verified the identity of the whistleblower on whose behalf this form is being submitted by viewing the whistleblower's valid, unexpired government issued identification (e.g., driver's license, passport). I agree to retain a copy of the form that is filed, have the whistleblower adopt and sign that copy, and retain that signed copy of the form in my records.

I further certify that I have obtained the whistleblower's non-waivable consent to provide the Financial Crimes Enforcement Network (FinCEN), with the copy of the form signed by the whistleblower, upon FinCEN's request.

Name of Attorney and Law Firm:

Counsel Certified Date: [mm/dd/yyyy]

DISCLAIMER: Now is your only opportunity to download and save a copy of your completed Form WB-APP for your records. FinCEN will not provide a copy of this completed form at a later date. If you would like to download and save your completed Form WB-APP for your records, please click on the link below at this time: Print/Save Form WB-APP as PDF.

[ ] *I acknowledge that I have downloaded my Form WB-APP or am choosing not to have a copy of my Form WB-APP. [check if "Yes"]

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