June 1, 2026

VIA ELECTRONIC SUBMISSION
Financial Crimes Enforcement Network (FinCEN)
P.O. Box 39
Vienna, VA 22183

RE: Whistleblower Incentives and Protections, FINCEN–2026–0067 and RIN 1506–AB57

To Whom It May Concern:

SIFMA[1] writes in support of the Anti-Money Laundering Act of 2020's requirement for FinCEN to establish a formalized framework for a whistleblower program. Our targeted comments below are intended to encourage whistleblowers to come forward with original information while supporting FinCEN's stated goal of providing "entities that invest in strong internal audit and compliance programs the opportunity to benefit from such programs," by giving them "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."[2]

1. **Tie the waiting period for company insiders to required internal reporting to avoid undermining FinCEN's stated goal of incentivizing strong audit and compliance programs**

To fulfill FinCEN's stated objective, the requirement for certain company insiders to wait 120 days before making a reward-eligible report to FinCEN should be revised. As written, with the 120-day period starting from the date an insider obtains the relevant information, the provision undermines internal audit and compliance programs. We recommend revisions in line with the Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC) whistleblower programs in addition to a requirement to report internally.
Under the proposal, certain company insiders and third parties supporting an entity's audit and compliance functions (collectively, "company insiders" for this letter) must wait at least one

[1] SIFMA is the leading trade association for broker-dealers, investment banks, and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly one million employees, we advocate for legislation, regulation, and business policy affecting retail and institutional investors, equity and fixed income markets, and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. With offices in New York and Washington, D.C., SIFMA is the U.S. regional member of the Global Financial Markets Association (GFMA).

[2] FinCEN, Whistleblower Incentives and Protections, 91 Fed. Reg. 16328, 16332 (Apr. 1, 2026).

hundred and twenty (120) calendar days from the date they obtained award-eligible information before providing it to FinCEN, ostensibly to give an entity a chance to investigate, remediate, and consider possible voluntary self-disclosure. However, unlike other federal whistleblower programs, the 120-day period for company insiders under FinCEN's proposal does not depend on whether information has been reported internally. To give companies 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 120-day waiting period should be tied to the date on which information was reported to the relevant entity's audit committee, chief legal officer, or chief compliance officer (or their equivalents) or to the individual's supervisor; as with the SEC's whistleblower rules, the waiting period could be tied to the date the information was received only if the circumstances indicate that the entity's audit committee, chief legal officer, or chief compliance officer (or their equivalents) or the relevant supervisor was already aware of the information.[3]

We applaud FinCEN's recognition and support of internal compliance programs. Over many years, our members have invested billions of dollars and significant time and effort into sophisticated and strong internal compliance programs to comply with myriad regulations and to identify and proactively address potential misconduct and noncompliance. The Department of Justice (DOJ) and other federal agencies also recognize the importance of internal compliance programs, evidenced by their policies that give credit for voluntary self-disclosure of misconduct identified by an entity through its audit and compliance functions.[4] We previously advocated for whistleblower programs that require internal reporting.[5] At a high level, whistleblower programs should work in concert with, rather than undermining, effective compliance programs in order to reduce money laundering, sanctions violations, and other targeted conduct.

---

[3] *See*, *e.g.*, 17 CFR § 240.21F-4(b)(v)(C) and 17 CFR § 165.2(g)(7)(iii).

[4] We recommend that FinCEN review OFAC's Enforcement Guidelines (Guidelines) to ensure that the benefits and incentives between the Guidelines and FinCEN's whistleblower rule are aligned. We are concerned that FinCEN's rule as proposed may be problematic for the incentives under the Guidelines, especially since FinCEN may share whistleblower information with OFAC. For instance, the Guidelines (31 CFR Part 501, Appendix A, Section I(I)) make clear that self-disclosures made to OFAC after a whistleblower report (no matter how soon after) will not receive voluntary self-disclosure (VSD) credit: "Notification to OFAC of an apparent violation is not a voluntary self-disclosure if: . . . when the Subject Person is an entity, the disclosure is made by an individual in a Subject Person entity without the authorization of the entity's senior management." Unlike under the DOJ's Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy (CEP), which offers full VSD credit in the criminal context, or the proposed FinCEN program, entities will not be eligible for OFAC VSD credit for disclosures made after a whistleblower is submitted to FinCEN and relayed to OFAC.

[5] *See*, *e.g.*, letter from Ira D. Hammerman, Executive Vice President and General Counsel, SIFMA to Brent Fields, Secretary, SEC re: Whistleblower Program Rules, Exch. Act Rel. No. 83557, File No. S7-16-18 (Sept. 18, 2018), https://www.sec.gov/comments/s7-16-18/s71618-4373269-175549.pdf, and letter from Saima S. Ahmed, Executive Vice President and General Counsel to Ms. Nicole M. Argentieri, Acting Assistant Attorney General, U.S. DOJ, Criminal Division, re: DOJ Whistleblower Rewards Pilot Program (June 3, 2024), https://www.sifma.org/advocacy/letters/doj-whistleblower-rewards-pilot-program.

As proposed, FinCEN's 120-day waiting period provision could have negative consequences for an entity's compliance program by disincentivizing internal reporting and creating a potential conflict between company insiders and their employers. For instance, a company insider could learn of potential misconduct through their position and simply wait before reporting to FinCEN, depriving the employer of the ability to obtain and process the information through well-established compliance programs and internal reporting mechanisms that FinCEN aims to support. Or, as to potential misconduct the firm has identified and is investigating, the firm could face pressure to report before a company insider may do so, even before the facts are fully understood, a situation that would create tension between company insiders and employers.

This latter scenario creates a two-fold problem. First and foremost, while FinCEN notes that the whistleblower's role with respect to internal compliance or reporting systems will be considered from an award perspective, the waiting period incentivizes whistleblowers to avoid reporting internally out of fear that they may become ineligible for an award due to their employer's own voluntary self-reporting. In doing so, whistleblowers would subvert their employer's ability to identify, report, and remediate compliance failures internally, a key feature of a strong compliance program and culture of compliance that our members strive to maintain. This dynamic may therefore lead to the unintended effect of extending periods of misconduct where employers are deprived of important information that would be necessary to conduct a thorough internal review. Second, the waiting period provision, as proposed, puts pressure on the employer's compliance programs to quickly self-report, even though they may not have completed an internal investigation or developed an action plan. The race against time subverts investigatory and decision-making processes, can divert finite resources away from other areas, and can result in less robust (or, potentially, defensive) self-reporting.

FinCEN's proposal to count the 120-day waiting period from the date a company insider obtains award-eligible information is markedly different from longstanding SEC and CFTC whistleblower program requirements. Although these agencies do not require internal reporting, they incentivize it in a way that FinCEN's proposal does not. Under the SEC's program, for example, a whistleblower remains eligible for an award if they first report internally and then report to the SEC within 120 days.[6] The date the whistleblower reports internally is considered the date reported to the SEC, effectively reserving the whistleblower's place in line for an award while providing the employer the opportunity to learn of the information and investigate the potential misconduct. By revising the proposed rule to have the clock start when the employer learns of the information, rather than when the company insider learns of it, the disadvantages in FinCEN's proposal to the whistleblower for reporting internally first would be eliminated, and

[6] 17 CFR § 240.21F-4(b)(7) states, "If you provide information to the Congress, any other authority of the Federal government, a state Attorney General or securities regulatory authority, any self-regulatory organization, or the Public Company Accounting Oversight Board, or to an entity's internal whistleblower, legal, or compliance procedures for reporting allegations of possible violations of law, and you, within 120 days, submit the same information to the [SEC] pursuant to § 240.21F-9 of this chapter, as you must do in order for you to be eligible to be considered for an award, then, for purposes of evaluating your claim to an award under §§ 240.21F-10 and 240.21F-11 of this chapter, the [SEC] will consider that you provided information as of the date of your original disclosure, report or submission to one of these other authorities or persons." The CFTC has a similarly structured provision (with a 180-day waiting period) found in 17 CFR § 165.2(i)(3).

the employee would remain eligible for an award. This benefits the employer and the government agency in terms of more robust and thoughtful self-disclosure. To address these issues and to support compliance programs, SIFMA recommends that FinCEN condition award eligibility on a requirement that company insiders timely report internally through appropriate internal escalation mechanisms, and that individuals who fail to do so should be ineligible for an award. The waiting period for company insiders would be tied to their internal reporting rather than initial awareness and they would remain eligible for a whistleblower award if all other eligibility criteria are met.

Finally, we recommend that FinCEN include in-house legal professionals in the definition of company insiders by amending the provision to state "…whose principal duties involve audit [,legal,] or compliance responsibilities…." This change would reflect that in-house lawyers might be eligible if they have original information that is not subject to attorney-client privilege or the work product doctrine, but must wait the requisite period before making a whistleblower report for the same reasons as audit and compliance company insiders.

2. Extend the waiting period for company insiders to 180 days

SIFMA also recommends that FinCEN extend the waiting period for company insiders to 180 days. This would align with OFAC's expectations regarding the period for submitting a detailed self-disclosure of apparent violations following a preliminary report, which a relevant consideration in the context of FinCEN's whistleblower program and has precedent in the 2017 changes the CFTC made to its whistleblower program.[7] As noted above, providing additional time in addition to our recommended changes benefits both the employer and the government agency without disadvantaging the whistleblower.

3. Expand the ineligibility criteria so whistleblowers do not benefit from their misconduct

A. Sharing sensitive data

The proposed rule, at 31 CFR 1010.930(c)(5)(iv)(A)(3), would render whistleblowers ineligible for sharing information that is determined by a U.S. court to have violated Federal or state criminal law, for example, by sharing Suspicious Activity Reports (SARs) or Confidential Supervisory Information (CSI) that is protected by Federal law. But conditioning ineligibility on a successful prosecution may not deter whistleblowers from sharing sensitive data. Treasury and FinCEN would likely know if protected data have been shared in violation of Federal or state criminal law, thus rendering a determination by a U.S. court unnecessary. Accordingly, we recommend removing the determination by a U.S. court condition from the ineligibility criterion, eliminating any incentives for a whistleblower to share sensitive data without fear of prosecution.

[7] *See*, OFAC guidance on submitting a voluntary self-disclosure, https://disclosure.ofac.treas.gov/ (last accessed on May 28, 2026); CFTC Press Release Number 7559-17, *CFTC Strengthens Anti-Retaliation Protections for Whistleblowers and Enhances the Award Claims Review Process,* and Fact Sheet (May 22, 2017), https://www.cftc.gov/PressRoom/PressReleases/7559-17.

B. Culpability

Paying awards to culpable whistleblowers could have the unintended effect of incentivizing violations and preventing entities from addressing misconduct because of anti-retaliation protections. As we have said before:

> …anyone who directed, planned or initiated misconduct should be categorically disqualified from receiving a whistleblower award. Individuals should be ineligible for an award if they knew or reasonably should have known that their conduct was improper. To the extent that individuals who are unwitting participants in a violation become aware that activity is improper during the course of that activity, then they should be eligible for an award if they report promptly upon becoming aware of the impropriety.[8]

Although FinCEN states that culpability would be taken into consideration, SIFMA recommends that this position be incorporated into the regulatory framework or relevant guidance, either by making culpable whistleblowers (e.g., persons who have willfully facilitated or participated in sanctions, AML, or other violations) categorically ineligible or by adopting the DOJ's or SEC's approach, each of which discourages awards going to those who have significant levels of culpability or directed the misconduct in question.[9]

***

SIFMA welcomes the opportunity to comment on this proposal. Please feel free to contact me should you have any questions regarding our comments or any related matters.

Respectfully submitted,

Bernard V. Canepa

Bernard V. Canepa
Managing Director and Associate General Counsel

---

[8] Letter from SIFMA to the SEC, *supra* note 5 at p. 12.

[9] DOJ: "You will not be eligible for an award if you meaningfully participated in the criminal conduct including if you orchestrated, executed, led, or knowingly profited from the criminal activity or if you were convicted of the criminal activity. If your minimal role in the criminal activity was sufficiently limited that you could be described as "plainly among the least culpable of those involved in the conduct of a group," U.S.S.G. § 3B1.2 cmt. n.4, you may be eligible for an award. DOJ FAQ 6, https://www.justice.gov/criminal/criminal-division-corporate-whistleblower-awards-pilot-program (last accessed May 28, 2026).

SEC: "[W]hile there are safeguards . . . to ensure that whistleblowers do not profit from their own misconduct, including where they substantially directed, planned or initiated the misconduct of an entity, or conduct for which they are criminally convicted, culpable whistleblowers can still get paid for eligible information they report that falls outside of these limitations." Remarks of Andrew Ceresney, Director of Enforcement, SEC, at Sixteenth Annual Taxpayers Against Fraud Conference in Washington, D.C. (Sept. 14, 2016), https://www.sec.gov/newsroom/speeches-statements/ceresney-sec-whistleblower-program; s*ee also*, 17 CFR § 240.21F-6(b)(1) for factors considered.