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U.S. FinCEN should amend whistleblower proposal to meet 'special needs' of foreign tipsters -experts

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The U.S. Financial Crimes Enforcement Network (FinCEN) must amend its recently proposed whistleblower rule to protect and incentivize international whistleblowers, experts have said.

As previously reported, FinCEN released its notice of proposed rulemaking (NPRM) to fully implement a whistleblower program by establishing a framework of incentives and protections. It is codified by the Anti-Money Laundering Act of 2020 and the Anti-Money Laundering Whistleblower Improvement Act (AML WIA) of 2022.

Congress intended to encourage individuals to report tips on fraud-related violations of the Bank Secrecy Act (BSA), U.S. sanctions programs administered by the Office of Foreign Assets Control and several other laws critical to safeguarding the U.S. financial system and national security.

In a recent comment letter, however, the National Whistleblower Center said the Securities and Exchange Commission's Dodd-Frank regulations differ from the rules necessary to implement whistleblower incentives targeting money laundering, sanctions violations, terrorism financing and transnational organized crime.

'Major role' for international whistleblowers

It said international whistleblowers "will play a major role" in reporting such crimes and will face "special hardships" and potential retaliation for doing so. FinCEN must address these challenges, the National Whistleblower Center said.

"The laws covered under the FinCEN proposed rules are transnational in nature. Unlike Dodd-Frank, these laws have a major international focus and are not focused on protecting U.S. investors," the comment letter states. "The proposed rules need to be revised to incorporate the special needs of non-U.S. whistleblowers who will play a central role in reporting violations covered under the [Anti-Money Laundering Whistleblower Improvement Act]."

Better rules could turn accomplices into whistleblowers

Large, sophisticated fraud schemes that use the U.S. banking system "are most successful and go seemingly 'undetected' when the bank's own employees are either active participants or intentionally shirk their reporting obligations under their employer's BSA/AML compliance protocols," said Stephanie Hauser, a former federal prosecutor who targeted fraud and money laundering fueled by lax AML programs at large financial institutions.

"Whereas a bank branch employee may otherwise be lured by a fraudster's promise of gifts and rides on private planes, FinCEN's proposed whistleblower program provides a counter-financial-incentive to do the right thing and report suspicious and fraudulent activity instead of joining in on it," Hauser told Regulatory Intelligence.

U.S. fraud often involves international money laundering

It is common for schemes that start in or target the United States to involve international money laundering, either through foreign banks or offshore cryptocurrency exchanges, said Hauser, now a partner at Levine Kellogg Lehman Schneider + Grossman LLP, representing whistleblowers and fraud victims.

"While the United States maintains good relationships with many international law enforcement counterparts and is a party to and participates in international evidence-sharing treaties, it's no secret that international money launderers strategically utilize financial institutions and crypto exchanges in jurisdictions that are less than friendly with the United States and do not comply with U.S. service of process," she said.

"In those instances, it is incredibly valuable to U.S. law enforcement to have the assistance of a whistleblower in those jurisdictions."

Hauser said the National Whistleblower Center's comments "highlight the importance of encouraging those whistleblowers in hostile jurisdictions to come forward and participate in the program, as well as the unique hardships those whistleblowers may face."

The comment period for FinCEN's whistleblower proposal ends on June 1.

(Brett Wolf, CUBE Regulatory Intelligence)