

## MEMORANDUM

**TO:** Representative Rosa DeLaruo  
Chair, House Appropriations Committee

**FROM:** Stephen M. Kohn  
Chairman of the Board of Directors  
National Whistleblower Center

Benjamin Calitri  
Public Interest Law Fellow

**DATE:** December 15, 2022

**RE:** AML/Sanctions Whistleblower Bill (S. 3316 and H.R. 7195)  
Bills Establishing Revolving Funds That Did Not Go Through the House  
Appropriations Committee

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The Anti-Money Laundering (AML) Whistleblower Improvement Act (S. [3316/H.R.7195](#)) seeks to establish a revolving fund for the payment of whistleblowers who provide information to the Department of Treasury that results in the successful collection of fines and penalties from wrongdoers who have laws governing money laundering or sanctions. The revolving fund that would be established under the AML whistleblower law is established through explicit legislative authority, as required under appropriations law and practice. GAO, [Principles of Federal Appropriations Law](#), 3rd ed., GAO-04-261SP, 12-89 (Washington, D.C.: Jan. 2004). The revolving funds established under AML constitutes an *exception* to the requirements of 31 U.S.C. § 3302(b), and thus can (and should) be established through the AML whistleblower law, and not through an appropriations act. *Id.* at 12-89.

The AML whistleblower law meets the three criteria required for a revolving fund that can be created outside the requirements of § 3302(b). As explained in *Principles of Federal Appropriations Law*, these requirements are:

(1) “*specify the receipts or collections which the agency is authorized to fund . . .*” The AML law meets this criteria. The revolving fund can only be used to compensate whistleblowers whose original information directly resulted in the successful prosecution at issue. All funds placed into the revolving fund come from the sanctions obtained in the whistleblower-triggered cases. No taxpayer money is ever used and no taxpayer money is needed to establish the fund.

(2) “*define the fund’s authorized uses . . .*” This is the heart of the fund. The authorized use is limited to paying the whistleblowers. Under a normal bounty law this is always the process. As far back as 1791 Congress understood that informants needed to be paid, and they paid them outside the appropriations process through a percentage of the recoveries obtained by the United

States. Thus, the “authorized uses” established by the AML law are consistent with how whistleblowers have historically been paid, including whistleblower payments under the Lacey Act, the Endangered Species Act, the Securities and Exchange Act, the Commodity Exchange Act, and the Auto Safety Act.

(3) “*authorize the agency to use receipts for those purposes without fiscal year limitation.*” This is also a central feature in the AML law, and consistent with all other whistleblower revolving funds. The need for this is obvious: A sanction may be obtained from a fraudster in one fiscal year, but the adjudication of the whistleblower’s right to obtain a payment usually occurs in a subsequent fiscal year, as the agency must exercise due diligence in determining eligibility.

*Id.* at 12-90 (setting forth the three criteria).

What is unique about Whistleblower bills is that they MUST be sustained by a revolving fund.<sup>1</sup> Whistleblower rewards are paid from the collected proceeds derived from third parties based on the information they provide, without any cost, to the United States. Whistleblower programs need a revolving fund in order to encourage whistleblowers to come forward. The certainty of reward payments from a revolving fund is necessary for whistleblowers, who put themselves at great personal risk, to engage with whistleblower programs.

Many revolving funds require an “initial infusion of working capital” that “may be in the form of an initial lump-sum appropriation, a transfer of balances from some existing appropriation or fund, a transfer of property and/or equipment, borrowing authority, or some combination of these.” *Id.* at 12-92. The revolving fund established by Anti-Money Laundering (AML) Whistleblower Improvement Act ([3316/H.R.7195](#)) requires none of these initial appropriations. All capital for the revolving fund will be supplied by receipts collected in the future from the sanctions obtained by wrongdoers.

A large number of House of Representatives (H.R.) bills that establish revolving funds regularly go through House committees other than the Appropriations Committee.<sup>2</sup> For example:

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<sup>1</sup> This includes the SEC Whistleblower Program, Section 21F of the Securities Exchange Act of 1934 (15 U.S.C. 78u-6), established in 2010 in Section 922 of the Dodd-Frank Act; the CFTC Whistleblower Program, Section 23 of the Commodity Exchange Act (7 U.S.C. § 26), established in 2010 in the Dodd-Frank Act; the Endangered Species Act, (16 U.S.C. § 1540(d)); and the Lacey Act, (16 U.S.C. § 3375(d)).

<sup>2</sup> The GAO *Principles of Federal Appropriations Law* handbook clearly specifies that “[t]he authority to establish a revolving fund, of course, **may** be contained in an appropriation act.” GAO, [Principles of Federal Appropriations Law](#), 3rd ed., GAO-04-261SP, 12-89 (Washington, D.C.: Jan. 2004) (emphasis added). However, including a revolving fund in an appropriations act is actually disfavored because “a provision contained in an annual appropriations act may not be construed as permanent legislation unless the language or nature of the provision makes it clear that Congress intended it to be permanent.” *Id.* at 12-89, n.59.

H.R.5673 - Safeguarding Tomorrow through Ongoing Risk Mitigation Technical Corrections Act, 117th Congress (2021-2022) went through the House Transportation and Infrastructure Committee.

H.R.3684 - Infrastructure Investment and Jobs Act, 117th Congress (2021-2022) went through the House Transportation and Infrastructure Committee.

H.R.2471 - Consolidated Appropriations Act, 2022, 117th Congress (2021-2022) went through the House Foreign Affairs Committee.

H.R.5961 - To make revisions in title 5, United States Code, as necessary to keep the title current, and to make technical amendments to improve the United States Code, 117th Congress (2021-2022) went through the House Judiciary Committee.

H.R.7900 - National Defense Authorization Act for Fiscal Year 2023, 117th Congress (2021-2022) went through the House Armed Services Committee.

H.R.7776 - James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, 117th Congress (2021-2022) went through the House Transportation and Infrastructure Committee.

H.R.4350 - National Defense Authorization Act for Fiscal Year 2022, 117th Congress (2021-2022) went through the House Armed Services Committee.

H.R.2662 - Inspector General Independence and Empowerment Act of 2021, 117th Congress (2021-2022) went through the House Oversight and Reform and the House Budget Committee.

H.R.2 - Moving Forward Act, 116th Congress (2019-2020) went through the House Transportation and Infrastructure Committee.

H.R.1865 - Further Consolidated Appropriations Act, 2020, 116th Congress (2019-2020) went through the House Financial Services Committee.

H.R.6395 - William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, 116th Congress (2019-2020) went through the House Armed Services Committee.

These bills show that it is regular and ordinary to not require bills establishing revolving funds to go through the Appropriations Committee, where the authorizing statute falls outside of § 3302(b). Given the urgent and time-sensitive need to pass the AML whistleblower bill ([3316/H.R.7195](#)), the bill should be placed on the suspension calendar and immediately voted upon. under the suspended rules session without its prior approval by the Appropriations Committee.