

# Client Alert: DOJ Announces New Whistleblower Rewards Program and Enhanced Focus on AI-Related Risks

## Publications

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By: Anthony Barkow, David Bitkower, Brandon D. Fox, Katya Jestin, Erin Schrantz, Tali R. Leinwand, Carolyn S. Small, Paige Zielinski

Continuing to prioritize corporate criminal enforcement, the Department of Justice (DOJ) announced two new steps it is taking to identify potential corporate misconduct and evaluate companies' compliance programs. Deputy Attorney General (DAG) Lisa Monaco announced these measures on March 7, 2024 at the American Bar Association's White Collar Crime Conference in San Francisco. First, DAG Monaco introduced DOJ's whistleblower "pilot program" to reward individuals who help DOJ uncover significant corporate or financial misconduct, saying the program will fill the gaps of the "patchwork quilt" of existing whistleblower programs. Second, DAG Monaco reported that DOJ is now directing prosecutors to assess companies' abilities to manage risks related to artificial intelligence (AI) as part of its consideration of compliance programs. These steps complement DOJ's efforts to incentivize voluntary self-disclosure and address risks created by the proliferation of AI—a technology DAG Monaco referred to as a "double-edged sword" with "the sharpest blade yet". Given these comments, now is a good time for companies to examine their compliance programs with an eye toward strengthening internal reporting mechanisms and understanding and managing AI-related risks.

## Whistleblower Rewards Program

DOJ has long relied on cooperators and self-reporting to uncover corporate wrongdoing. At least two US attorney's offices —the Southern District of New York and, most recently, the Northern District of California — are piloting initiatives that are, in essence, voluntary self-disclosure programs for individuals. Both are offering non-prosecution agreements to certain categories of at-fault individuals who self-disclose wrongdoing and cooperate against other, more culpable targets.

But DOJ is now going a step further by creating a rewards program to incentivize people to come forward with information about corporate misconduct. The rewards program is conceptually similar to whistleblower rewards in False Claims Act matters but will be used to incentivize reporting of a broader range of corporate misconduct. If the program is implemented effectively, companies could see an increase in criminal inquiries and enforcement action.

Under the new program, individuals who provide information that helps DOJ discover “significant corporate or financial misconduct” may be able to receive a portion of any resulting civil or criminal forfeitures. In describing the program, DAG Monaco emphasized that the information provided must not be otherwise known to DOJ. In other words, like those who report fraud under the False Claims Act, whistleblowers under the new program will “have to be the first in the door” to qualify for a financial reward. Whistleblowers seeking payments under the new program will have to meet three additional conditions not present in False Claims Act matters. First, no rewards will be paid to whistleblowers before all victims are fully compensated. Second, the whistleblower must not have been involved in the criminal activity. And third, there must not already be an existing financial disclosure incentive.

DAG Monaco also identified three types of information in which DOJ is “especially interested”:

- (a) information about criminal abuses of the US financial system;
- (b) foreign corruption cases outside the jurisdiction of the Securities and Exchange Commission (SEC), which already has a whistleblower rewards program; and
- (c) domestic corruption cases, “especially involving illegal corporate payments to government officials”.

This list provides helpful guidance to companies looking to identify areas in which their compliance programs should be particularly robust.

Many details about the program remain unknown, such as the amount of recovery a whistleblower might be able to receive and requirements for program eligibility. DAG Monaco noted that DOJ will continue to develop these specifics over the next 90 days. In the meantime, Acting Assistant Attorney General Nicole M. Argentieri previewed in remarks that DOJ expects to limit rewards to cases in which the agency orders sanctions of \$1 million or more. She also noted that DOJ’s Money Laundering and Asset Recovery Section will play a leading role in designing the program, given that the statutory authority is tied to DOJ’s forfeiture program. DOJ will formally implement the program later this year.

### AI-Related Risks

DAG Monaco’s second important announcement was that she has directed the Criminal Division to incorporate assessment of AI-related risks into its Evaluation of Corporate Compliance Programs’ guidance. She urged compliance officers to take note that going forward, federal prosecutors would be following this updated guidance, and assessing companies’ ability to manage AI-related risks as part of their compliance efforts.

Assessing AI-related risks as part of the evaluation of corporate compliance programs is the latest in a series of steps DOJ has taken in response to the rapid emergence of AI. Attorney General Merrick Garland recently appointed DOJ’s inaugural chief science and technology advisor and chief artificial intelligence officer. In addition, DAG Monaco delivered remarks last month at the University of Oxford, in which she signaled tougher enforcement against crimes involving AI. These steps highlight DOJ’s continued focus on and investment in combating the risks posed by AI.

Other regulators, such as the Commodities Futures Trading Commission (CFTC) and the SEC, have also focused on AI-related risks. In January, the CFTC sought public comment regarding how AI may be used in the derivatives marketplace, including the risks of AI related to market manipulation and fraud, governance, and privacy and confidentiality. Similarly, the SEC proposed new requirements last year that would prevent broker-dealers and investment advisers from using AI in a manner that places the firm's interests ahead of the interests of customers and clients.

### Key Takeaways

Corporate criminal enforcement continues to be a priority for DOJ. While the specifics of the whistleblower pilot program remain unclear, it could become a significant tool for DOJ to generate reports of alleged corporate wrongdoing. Indeed, 2023 was a record-breaking year for the SEC's whistleblower program, with the SEC seeing a 13% increase from 2022 in tips, complaints, and referrals. But offering potentially lucrative incentives could also increase the number of investigations based on false reporting or speculation and could disrupt companies' efforts to promote effective internal reporting and investigative channels. To avoid being caught off guard by a DOJ investigation based on a whistleblower complaint, corporate leaders should examine the strength of their compliance and reporting channels and consider implementing additional proactive measures to uncover misconduct and promote effective internal reporting. Companies should also be aggressive in conducting assessments of reports of wrongdoing so they are prepared to respond to DOJ should a whistleblower decide to take allegations to the government.

Separately, the proliferation of AI and the associated risks are front and center for enforcement agencies and regulators. Companies that use or rely on AI should consider whether their current compliance policies are sufficient to cover the potential legal risks associated with AI, or whether an update is warranted.

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### **Related Attorneys**

**Anthony Barkow**

Managing Partner, New York  
abarkow@jenner.com  
+1 212 891 1662

**David Bitkower**

Partner  
dbitkower@jenner.com  
+1 202 639 6048

**Brandon D. Fox**

Managing Partner, Los Angeles and Century City  
bfox@jenner.com  
+1 213 239 5101

**Katya Jestin**

Partner  
kjestin@jenner.com  
+1 212 891 1685

**Erin Schrantz**

Partner  
eschrantz@jenner.com  
+1 312 840 8674

**Tali R. Leinwand**

Partner  
tleinwand@jenner.com  
+1 212 891 1697

**Carolyn S. Small**

Partner  
csmall@jenner.com  
+1 213 239 2250

**Paige Zielinski**

Partner  
pzielinski@jenner.com  
+1 628 267 6844

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