

# DOJ Continues Its Trend of Strengthening Incentives to Report Corporate Misconduct

## Client Alerts

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Just over a month after Deputy Attorney General Lisa Monaco announced the upcoming launch of the Department of Justice's whistleblower rewards program, the DOJ Criminal Division unveiled its newest program to incentivize disclosure of alleged corporate wrongdoing: the Pilot Program on Voluntary Self-Disclosures for Individuals. The launch of this program is the latest in a string of new programs that are designed to incentivize individuals to report corporate wrongdoing and cooperate with the government when it investigates and prosecutes companies for certain criminal violations. Below, we provide an overview of the new program and criteria for participation, and discuss the government's growing emphasis on encouraging self-disclosures and implementing whistleblower programs to identify potential criminal violations by public and private companies.

### Overview of the Program

The Criminal Division's voluntary self-disclosure pilot program seeks to incentivize individuals to voluntarily disclose corporate wrongdoing by offering them a non-prosecution agreement in exchange for providing "original information" about corporate criminal conduct. Like DOJ's whistleblower rewards program, the voluntary self-disclosure program requires that individuals who voluntarily disclose misconduct be "first in the door" to be considered for a non-prosecution agreement. In addition, the DOJ whistleblower rewards program is not available to individuals who played a role in the misconduct, whereas the new individual self-disclosure program is available to such individuals.

Details about the new program are set forth in an April 15, 2024 memorandum. According to the memorandum, DOJ views the program as an "important incentive for companies to create compliance programs that encourage robust internal reporting of complaints, that help prevent, detect, and remediate misconduct before it begins or expands, and that allow companies to report misconduct when it occurs." The memorandum also notes that the program "provides transparency" regarding the circumstances in which Criminal Division prosecutors will offer non-prosecution agreements to individuals who self-disclose corporate misconduct.

### Criteria for Participation

To be eligible for a non-prosecution agreement, the following criteria must be met:

- **Original information:** The reporting individual must disclose non-public information that is not otherwise known to the Criminal Division or to any DOJ component.
- **Voluntariness:** The disclosure must be voluntary, meaning there can be no prior government request or inquiry related to the subject matter, no preexisting disclosure obligation, and no government investigation or threat of imminent disclosure.
- **Truthful and complete information:** The disclosure must include all known information, including the complete extent of the reporting individual's own role in the misconduct.
- **Full cooperation and substantial assistance:** The reporting individual must agree to fully cooperate with and provide substantial assistance to the DOJ in investigating and prosecuting equally or more culpable individuals or entities.
- **Restitution and disgorgement:** The reporting individual must agree to pay restitution to any victims and forfeit and disgorge any profit from the wrongdoing.
- **Certain roles excluded:** The reporting individual must not be the chief executive officer or chief financial officer of a public or private company, the organizer or leader of the scheme, an elected or appointed foreign government official, or a domestic government official at any level.
- **Certain conduct excluded:** The reporting individual must not have engaged in violence or a sex or terrorism offense, and must not have a prior felony conviction for conduct involving fraud or dishonesty.

Additionally, the information provided must relate to at least one of the following:

- **Violations by financial institutions,** including schemes involving money laundering, Bank Secrecy Act violations, money transmitting businesses, fraud statutes, and fraud against or compliance with financial institution regulators.
- **Violations related to the integrity of financial markets** undertaken by (1) financial institutions, investment advisors, or investment funds; (2) by or through public or private companies with 50 or more employees; or (3) by any insiders or agents of any such entities.
- **Violations related to foreign corruption and bribery,** including violations of the Foreign Corrupt Practices Act, Foreign Extortion Prevention Act, and money laundering statutes.
- **Violations related to health care fraud or illegal health care kickbacks** by or through companies with 50 or more employees.

- **Violations related to fraud in connection with federally funded contracting** by or through companies with 50 or more employees.
- **Violations related to bribery or kickbacks to domestic public officials** by or through companies.

### Part of a Continued Trend

The Criminal Division's new voluntary self-disclosure program comes on the heels of several new DOJ programs designed to incentivize individuals to report corporate misconduct. These programs include the upcoming DOJ-wide whistleblower program mentioned above, which is anticipated to begin later this year, as well as whistleblower programs being piloted by the US Attorney's Offices for the Southern District of New York and Northern District of California. Like the Criminal Division's voluntary self-disclosure program, SDNY's whistleblower program and NDCA's whistleblower program offer self-disclosing individuals potential eligibility for a non-prosecution agreement under certain conditions and operate as voluntary self-disclosure programs without the promise of any financial reward. The DOJ whistleblower program, on the other hand, will utilize forfeited funds to pay potentially significant financial rewards to innocent whistleblowers at the conclusion of civil or criminal proceedings.

One criticism that has been raised about programs strengthening incentives to report to the government is that these programs could result in employees bypassing internal reporting channels, thereby undermining internal reporting channels and compliance efforts and depriving companies of the opportunity to investigate and address potential misconduct before the government becomes involved. In response to such concerns, DOJ reportedly is examining whether, under the DOJ-run whistleblower program, whistleblowers will be required to first report internally (and, if so, how far in advance). As indicated in the Criminal Division's memorandum, these programs underscore the importance for companies to maintain strong compliance programs with robust and clear reporting channels so that employees understand where and how to raise concerns internally.

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Jenner & Block's Investigations, Compliance, and Defense team has extensive experience helping companies build out internal reporting channels and investigative protocols, as well as navigating whistleblower complaints and government inquiries. We are continuing to monitor developments in this area and anticipate the trend of new whistleblower and voluntary self-disclosure programs focused on corporate wrongdoing to continue.

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