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U.S. Department of Justice Announces Corporate Whistleblower Awards Pilot Program

Criminal Division Announces Pilot Program Offering Monetary Awards to Whistleblowers, Including Those with Minimal Involvement in the Reported Corporate Misconduct

SUMMARY

On August 1, 2024, Deputy Attorney General Lisa Monaco [announced](#) the launch of the U.S. Department of Justice's [Corporate Whistleblower Awards Pilot Program](#) ("Pilot Program"), which enables whistleblowers to receive financial awards in exchange for information about certain corporate misconduct. Under the Pilot Program, which was initially previewed in March 2024, whistleblowers—even those with some involvement in the reported criminal activity—may be eligible for a portion of successful forfeiture actions. The Criminal Division simultaneously announced a corresponding amendment to the Corporate Enforcement and Voluntary Self-Disclosure Policy ("Corporate Enforcement Policy") that provides that, notwithstanding that a whistleblower has already reported a matter to the DOJ, a company may still be eligible for a presumption of a declination if it self-reports the misconduct within 120 days of the whistleblower's report and does so before the DOJ reaches out to the company.

In her remarks explaining the Pilot Program, Principal Deputy Assistant Attorney General Nicole Argenti [noted](#) that the purpose of the policy is to both incentivize employees to report misconduct and encourage companies to "make the necessary compliance investments to help prevent, detect, and remediate misconduct."

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A. BACKGROUND

The Pilot Program is part of a recent effort by the DOJ to incentivize both whistleblowers and voluntary self-disclosures. For example, on April 15, 2024, the Criminal Division launched the Pilot Program on Voluntary Self-Disclosure for Individuals (“Individual VSD Pilot Program”). Under the Individual VSD Pilot Program, individuals who were directly involved in corporate criminal misconduct can self-report in exchange for non-prosecution agreements. To be eligible for immunity, individuals must voluntarily self-report and fully cooperate with the DOJ in order to obtain a declination. Additionally, the reporting individual must agree to forfeit or disgorge any profit.

On March 7, 2024, DAG Monaco [announced](#) that the DOJ was undertaking a 90-day “policy sprint” to design a pilot program to pay monetary awards to whistleblowers. Notably, DAG Monaco previewed that the program would likely apply to whistleblowers who were “not involved in the criminal activity itself.”

B. CORPORATE WHISTLEBLOWER AWARDS PROGRAM ELIGIBILITY REQUIREMENTS

The Corporate Whistleblowers Awards Pilot Program is a three-year initiative managed by the Money Laundering and Asset Recovery Section, after which the Criminal Division will determine whether to extend or amend the program. The Criminal Division emphasized that the Pilot Program is intended to complement—rather than replace—existing whistleblower award and *qui tam* programs. As such, the Pilot Program is restricted to tips related to four specific areas of corporate crime, each of which the Criminal Division identified as priority enforcement areas that do not have already existing whistleblower award programs:

- **Financial Institutions.** The Pilot Program covers violations by financial institutions or their or agents involving money laundering, anti-money laundering compliance violations, registration of money transmitting businesses, fraud statutes, or fraud against or non-compliance with financial institution regulators. In her remarks announcing the Pilot Program, DAAG Argentieri noted that financial institutions are the “first defense against illicit finance” and a priority area for enforcement. However, the Pilot Program extends only to financial institution-related cases not covered by existing whistleblower programs. As examples of the types of cases covered by the Pilot Program, the Criminal Division pointed to Binance, which failed to register with financial regulators, and Danske Bank, which did business with U.S. financial institutions by misrepresenting the nature of anti-money laundering controls it had in place for certain high-risk customers.
- **Foreign Corruption.** The Pilot Program covers violations related to the Foreign Corrupt Practices Act (FCPA), the Foreign Extortion Prevention Act (FEPA), and money laundering statutes. In an effort to provide whistleblower incentives to foreign corruption cases that are not covered by the Securities and Exchange Commission’s existing whistleblower program, the Pilot Program extends to information regarding companies that do not issue securities in the United States. The Criminal Division additionally particularly noted that the Pilot Program is intended to assist in its intention to “vigorously enforce” the recently-passed FEPA, which complements the FCPA by criminalizing the demand side of bribery.
- **Domestic Corruption.** The Pilot Program covers domestic corruption, such as the bribery of U.S. federal or state government officials. The Criminal Division noted that this is a substantive area where the DOJ is seeking to expand enforcement efforts.

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- **Healthcare Fraud Involving Private Insurers.** The Pilot Program covers violations related to (i) federal healthcare offenses and related crimes involving private or non-public health care benefit programs, (ii) fraud against patients, investors, and other non-governmental entities in the health care industry, and (iii) any other federal violations involving conduct related to health care not covered by the False Claims Act. The Pilot Program Guidance clarifies that the Pilot Program is intended to complement, rather than supplant, the Civil Division's *qui tam* program, which provides monetary incentives for whistleblowers regarding fraud on federal health care benefits programs. The Criminal Division noted that the Pilot Program is intended to address a recent trend of healthcare fraud on *private* insurers and identified this too as an area where the DOJ is seeking to expand enforcement.

In addition to providing information related to the above substantive areas, whistleblowers must satisfy certain requirements in order to be eligible for a potential financial award. In particular, among other requirements, whistleblowers must be individuals—rather than companies or other entities—and cannot be elected or appointed foreign officials, or an employee or contractor of the DOJ or other law enforcement organization. Notably, whistleblowers must not have “meaningfully participated” in the criminal activity, including by “directing, planning, initiating, or knowingly profiting from” the reported misconduct. However, the Pilot Program provides that whistleblowers that participated in the reported misconduct to some lesser degree may still be eligible for financial awards.

Further, in order to qualify for an award, whistleblowers must provide original information not derived from publicly available sources and not previously known to the DOJ. The Criminal Division clarified that a whistleblower may still be eligible for the Pilot Program if the individual provides information regarding a matter or incident of which the DOJ is already aware, provided that the whistleblower's information is non-public and new to the DOJ. Whistleblowers additionally must submit any information voluntarily, before the DOJ directs a response, inquiry, or demand to them. However, the Pilot Program provides that individuals may still qualify as eligible whistleblowers if (i) they voluntarily reported the information to their employer before receiving a related request, inquiry, or demand from the DOJ, and (ii) they report the information to the DOJ or respond to the DOJ's request within 120 days of reporting the original information to their employer. Further, as with the DOJ's previous VSD programs, whistleblowers must provide complete and truthful information and cooperate fully with any resulting investigations.

Finally, the Pilot Program provides that whistleblowers are eligible for financial award only if the information provided leads to successful criminal or civil forfeiture actions exceeding \$1,000,000 in net proceeds.

The Criminal Division provided “additional guidance” for potential whistleblowers. For example, the Criminal Division noted that the DOJ will not publicly disclose any information whistleblowers provide that could “reasonably be expected to reveal the identify” of the whistleblower and that individuals can report anonymously if they are represented by an attorney.

C. ANTI-RETALIATION PROVISIONS

The Pilot Program contains multiple aspects focused on curbing retaliation by employers. For example, the Criminal Division requested that individuals additionally report any retaliation experienced as a result of their whistleblowing and explained that the DOJ will consider any such retaliation in considering whether to award a company with cooperation credit and/or to institute an “appropriate enforcement action” directly in response to retaliation.

The Criminal Division stated that it is “authorized” to communicate directly with any whistleblowers regarding possible criminal violations without seeking the consent of the entity at issue. The Pilot Program guidance further indicates that the Criminal Division will consider whether an “entity or person takes any action to impede an individual from communication directly” with the DOJ in assessing cooperation credit or culpability, including for obstruction.

D. CALCULATION OF POTENTIAL MONETARY AWARDS

The Pilot Program places the award ultimately provided to qualified whistleblowers fully within the discretion of the DOJ, but provides that absent any factors that may decrease an award (discussed below), the DOJ will award the whistleblower a maximum 30% of the first \$10 million in net proceeds forfeited. Eligible whistleblowers may additionally receive (i) up to 20% of the first \$100 million in net proceeds forfeited and (ii) up to 5% of any net proceeds between \$100 million and \$500 million.

The Criminal Division noted certain factors that may increase or decrease awards for whistleblowers. Factors that may increase awards include the significance of the information provided, the degree of assistance provided by the whistleblower, and participation in an employer’s internal compliance or whistleblower reporting system. Factors that may decrease awards include unreasonable delay in reporting, interference with internal compliance or reporting systems, or possession of a management or decision-making role that contributed to the conduct or related compliance failures. The Pilot Program also provides that a whistleblower’s culpability acts as a key factor that may decrease awards. In particular, the Criminal Division noted that it will look to whether a whistleblower received any kickbacks or other personal benefits from the scheme in determining whether an individual “meaningfully participated” in the misconduct.

E. CORPORATE ENFORCEMENT AND VOLUNTARY SELF-DISCLOSURE POLICY AMENDMENT

Along with the Pilot Program, the Criminal Division simultaneously announced a corresponding amendment to its Corporate Enforcement Policy. As noted above, the Corporate Enforcement Policy provides that companies may receive a presumption of declination if they promptly self-report and remediate misconduct and cooperate in the ensuing investigation. Under the new amendment, a company that receives an internal report of misconduct from a whistleblower must in turn report the misconduct to the DOJ within 120 days *and* before the DOJ reaches out to the company in order to qualify for the presumption of declination.

IMPLICATIONS

The Pilot Program and the accompanying amendment to the Corporate Enforcement Policy raise multiple important questions. *First*, potential monetary awards and/or immunity awards present powerful incentive for individuals—including those involved in criminal misconduct—to report directly to the DOJ rather than through internal corporate channels. Even if the DOJ ultimately determines an individual is not eligible for monetary awards because they “meaningfully participated” in the criminal activity, they could still be eligible for a non-prosecution agreement under the DOJ’s Individual VSD Policy. In an apparent attempt to counter this incentive, the Pilot Program provides that a whistleblower’s ultimate award may be increased if the individual first reports through internal corporate channels. However, it remains to be seen to what degree this factor will increase awards in practice and whether it will provide a sufficient incentive for whistleblowers to report misconduct to their employers.

Second, the amendment to the Corporate Enforcement Policy provides that a company must self-report to the DOJ within 120 days of receiving an internal whistleblower report *and* before the DOJ reaches out in order to qualify for a presumption of declination or other VSD benefits. It remains to be seen how this aspect of the policy will be implemented in practice. For example, it’s unclear if the DOJ will typically wait 120 days after receiving a whistleblower tip before reaching out to a company to give the company an opportunity to self-report the misconduct. Either way, under the amendment, companies seeking the benefits of the Corporate Enforcement Policy are on a tight clock to report any potential misconduct to the DOJ after receiving an internal whistleblower tip or information about potential misconduct.

Third, DOJ policies now incentivize companies to thoroughly investigate and remediate any potential wrongdoing, including by punishing potential wrongdoers, while simultaneously suggesting that companies may face consequences for retaliating against whistleblowers. Given that employees involved in the corporate wrongdoing may also be DOJ whistleblowers under the Pilot Program, these aspects of the program may present opposing obligations.

Finally, the Pilot Program indicates that the Criminal Division is paying close attention to any attempts to impede potential whistleblowers’ communications with the DOJ. Both the [SEC](#) and [Commodity Futures Trading Commission](#) have recently pursued charges against companies for including confidentiality provisions in separation agreements that impede communications with the agency. This provision in the Pilot Program suggests that the DOJ may pursue similar cases. Companies should review employee confidentiality agreements and include appropriate carve outs to confidentiality provisions for government reporting.

Companies will be well served to carefully evaluate internal compliance, whistleblower reporting, and internal investigations mechanisms, in light of incentives for employees to report directly to the DOJ. Given that these policy updates functionally require companies to immediately self-report misconduct in order to

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potentially gain self-disclosure benefits, companies should consider having a framework in place to quickly evaluate whether to report potential misconduct to the DOJ.

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