
DOJ Criminal Division Announces Pilot Program on Voluntary Self-Disclosure for Individuals

APRIL 18, 2024

On April 15, 2024, the Criminal Division of the Department of Justice (DOJ) announced the Pilot Program on Voluntary Self-Disclosure for Individuals, providing transparency regarding the circumstances in which Criminal Division prosecutors will offer non-prosecution agreements (NPAs) to individuals who voluntarily disclose original information about criminal misconduct involving corporations.¹

The announcement comes nearly six weeks after Deputy Attorney General Lisa Monaco rolled out another whistleblower rewards program at the American Bar Association's (ABA) 39th National Institute on White Collar Crime in San Francisco on March 7, 2024, to reward whistleblowers for providing information or assistance leading to civil or criminal forfeitures with payouts from those forfeitures.²

The DOJ explained that the purpose of this incentive program, which offers qualifying whistleblowers the possibility of entering into NPAs, is to “help us investigate and prosecute criminal conduct that might otherwise go undetected or be impossible to prove.”³ The DOJ added that the program “may be a particularly 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.”⁴ Notably, unlike other whistleblower incentive programs, such as that offered by the Securities and Exchange Commission (SEC), the “reward” for the whistleblower is an NPA and not a financial one.

Criteria

Under the program, whistleblowers “will” receive an NPA if they voluntarily self-disclose original, nonpublic and previously unknown information about certain types of criminal misconduct if they meet several criteria, which are outlined in a memorandum accompanying the announcement.⁵

The whistleblower must specify the complete extent of their own role in the misconduct, fully cooperate with authorities and pay any applicable victim compensation, restitution, forfeiture or disgorgement, including returning any ill-gotten gains. The program applies to disclosures made

on or after April 15, 2024.⁶

The offenses reported by the whistleblower must relate to:

- violations by financial institutions involving money laundering or fraud against financial institution regulators;
- violations related to the integrity of financial markets;
- violations related to foreign corruption and bribery;
- violations related to healthcare fraud or illegal healthcare kickbacks;
- violations related to fraud against the United States in connection with federally funded contracting other than healthcare fraud or illegal healthcare kickbacks; and
- violations related to the payment of bribes or kickbacks to domestic public officials.

There are several limitations on who is eligible for immunity. Qualifying whistleblowers cannot be the chief executive officer (or equivalent) or chief financial officer (or equivalent) of a public or private company or the organizer/leader of the scheme. Further, qualifying whistleblowers must be individuals who have not engaged in criminal conduct involving violence, use of force, threats or substantial patient harm; any sex offense involving fraud, force or coercion or relating to a minor; or any offense involving terrorism; are not elected or appointed foreign government officials; are not domestic government officials at any level, including any employee of a law enforcement agency; and do not have previous felony convictions or convictions of any kind for conduct involving fraud or dishonesty.

Definitions

The DOJ specified that a “voluntary” disclosure is one that occurs before any government inquiry into the matter, by an individual without any preexisting obligations in connection with criminal or civil actions to disclose the information, and in the absence of any government investigation or threat of imminent disclosure to the government or the public.⁷

Further, the DOJ specified that “truthful and complete” disclosures are ones that include all information known to the individual related to any misconduct in which the individual has participated and/or of which the individual is aware, including the complete extent of the individual’s own role in the misconduct, and all matters about which the department may inquire.

Finally, the DOJ clarified that to “fully cooperate with and be willing and able to provide substantial assistance,” the whistleblower must provide substantial assistance to the department in its investigation of related conduct and prosecution of equally or more culpable individuals, including but not limited to:

- providing truthful and complete testimony and evidence—whether in interviews, before a grand jury or at any trial or other court proceeding—and producing documents, records and other evidence when called on by the Criminal Division; and
- if requested, working in a proactive manner under the supervision of and in compliance with US law enforcement officers and agents.

Key Considerations for Companies and Individuals

- Companies should note the DOJ's emphasis on the potential of this program to function as a “particularly 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.”⁸ Accordingly, companies should consider reassessing their internal guidance on whistleblower policies, as well as assessing their approach to communicating and enforcing the requirements under those policies, in light of the increasing attention and evolving guidance from the DOJ.
- This program is the latest in a series of new Justice Department whistleblower programs rolled out in the past year, including the whistleblower rewards program previewed by Monaco at the National Institute on White Collar Crime,⁹ as well as a whistleblower program launched in February by the US Attorney's Office for the Southern District of New York that offers NPAs to individuals providing timely information on corporate misconduct.¹⁰ The increase in targeted and incentivized whistleblower reward programs signals the value that the DOJ places on whistleblowers as sources of information.
- These whistleblower programs supplement existing programs with other enforcement authorities, such as the SEC. We expect to see continued attention on and incentives for whistleblowers, not just from the DOJ but also from other enforcement authorities. Companies should consider assessing their approach to communicating and enforcing their whistleblower policies.
- In making their own decision whether to voluntarily disclose misconduct, companies should keep in mind the risk that the various new and existing whistleblower programs could lead to a greater likelihood that the DOJ may learn of misconduct through other sources.
- For certain individuals who realize they have been involved in a crime, the DOJ's new program provides an incentive to confess – but the NPA comes at a high price. The individuals have to be willing to satisfy the rigorous criteria, including repayment of all of the proceeds, reimbursement of all of the victims, and cooperation in any further investigation going forward.

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1. DOJ Memorandum: “The Criminal Division’s Pilot Program on Voluntary Self-Disclosures for Individuals” (Apr. 15, 2024), <https://www.justice.gov/criminal/media/1347991/dl?inline>.
 2. WilmerHale Client Alert: “DOJ Announces Pilot Whistleblower Rewards Program and Increased AI Enforcement” (Mar. 11, 2024), <https://www.wilmerhale.com/insights/client-alerts/20240311-client-alert-doj-announces-pilot-whistleblower-rewards-program-and-increased-ai-enforcement>.
 3. DOJ Press Release: “Criminal Division Pilot Program On Voluntary Self-Disclosures For Individuals” (Apr. 15, 2024), <https://www.justice.gov/criminal/criminal-division-pilot-program-voluntary-self-disclosures-individuals>.

4. DOJ Memorandum: “The Criminal Division’s Pilot Program on Voluntary Self-Disclosures for Individuals” (Apr. 15, 2024), <https://www.justice.gov/criminal/media/1347991/dl?inline>.
5. DOJ Memorandum: “The Criminal Division’s Pilot Program on Voluntary Self-Disclosures for Individuals” (Apr. 15, 2024), <https://www.justice.gov/criminal/media/1347991/dl?inline>.
6. DOJ Memorandum: “The Criminal Division’s Pilot Program on Voluntary Self-Disclosures for Individuals” (Apr. 15, 2024), <https://www.justice.gov/criminal/media/1347991/dl?inline>.
7. DOJ Memorandum: “The Criminal Division’s Pilot Program on Voluntary Self-Disclosures for Individuals” (Apr. 15, 2024), <https://www.justice.gov/criminal/media/1347991/dl?inline>.
8. DOJ Memorandum: “The Criminal Division’s Pilot Program on Voluntary Self-Disclosures for Individuals” (Apr. 15, 2024), <https://www.justice.gov/criminal/media/1347991/dl?inline>.
9. DOJ Press Release: “Deputy Attorney General Lisa Monaco Delivers Keynote Remarks at the American Bar Association’s 39th National Institute on White Collar Crime” (Mar. 7, 2024), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-keynote-remarks-american-bar-associations>.
10. SDNY Whistleblower Pilot Program, https://www.justice.gov/d9/2024-02/sdny_wb_policy_effective_2-13-24.pdf.

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