

DOJ Launches New Incentive Program for Corporate Whistleblowers

August 8, 2024

The US Department of Justice has officially launched its [whistleblower rewards pilot program](#), which offers financial incentives to individuals who report corporate misconduct to the DOJ and meet certain criteria. [Deputy Assistant Attorney General Nicole Argentieri has made clear](#) that the DOJ is attempting to break down barriers between whistleblowers and the government, [emphasizing](#) the importance for individuals to act quickly and proactively. As Argentieri put it: “Our tip line is open, so if you see something, say something.”

In March 2024, the [DOJ announced that it would be undertaking a “90-day sprint”](#) to develop this pilot program to create “new incentives” for individuals to report misconduct and to “drive companies to further invest in their own internal compliance and reporting systems.” (To learn more about the March announcement, check out [our previous post](#).)

Now in effect, the Corporate Whistleblower Awards Pilot Program will serve as a new tool for the DOJ to identify potential misconduct that would otherwise go undetected. The program will last three years and cover corporate misconduct across specific subject matter areas, including financial fraud, foreign corruption and bribery, domestic bribery involving US, state, and local government, and healthcare fraud within private entities. Given this focus, companies operating in the healthcare sector or that do business with the government should pay particular attention to this new policy – and the increased scrutiny that may come from it – and ensure their internal reporting and compliance programs are ready to quickly detect and address any misconduct.

Along with this program, the DOJ [amended its Corporate Enforcement and Voluntary Self-Disclosure Policy](#) to expand benefits to companies that self-report misconduct before the DOJ contacts them.

Taken together, these programs make the DOJ’s expectations to companies clear: “Call us before we call you.”

Pilot program criteria

Whistleblowers aiming to recover a share of the money recovered by the government as a result of their cooperation must meet the [criteria outlined by the DOJ for the pilot program](#).

Eligibility

A whistleblower must be an individual who was not a company officer or director, counsel, accountant, or hired to conduct internal compliance or audit processes.

A whistleblower also must not have “meaningfully participated” in the criminal activity they reported. Although “minimal participation” will not make an individual ineligible to participate in the pilot, it may serve as a factor to limit their award.

Information

The information provided to the DOJ under the pilot program must be nonpublic information not previously known to the DOJ, as well as **original** – meaning “derived from the individual’s independent knowledge or independent analysis.” It also must be voluntarily provided to the DOJ before any request or inquiry has been directed to them.

A whistleblower’s report must be **truthful and complete**, providing the DOJ with all information known to the whistleblower, including their role in the potential misconduct.

Reported misconduct also must fall into one of four subject matter areas to be considered under this pilot program, as listed below.

1. **Financial institutions:** Violations of financial regulatory laws and fraud against or noncompliance with financial institution regulators.
2. **Foreign corruption:** Violations involving foreign corruption and bribery, including violations of the Foreign

Extortion Prevention Act, Foreign Corrupt Practices Act, and money laundering laws.

3. **Domestic corruption:** Payments of bribes or kickbacks to domestic government officials at any level.
4. **Healthcare offenses:** Violations related to federal healthcare offenses and related crimes involving private or other nonpublic healthcare benefit programs; fraud against patients, investors, and other nongovernmental entities in the healthcare industry; and any other federal violations involving healthcare not covered by the False Claims Act.

Award

To receive an award, the whistleblower must have provided information that led to the successful asset forfeiture of more than \$1 million in net proceeds. Awards are determined at the DOJ's discretion and will vary depending on the circumstances, but generally, an eligible whistleblower may receive:

- Up to 30% of the first \$100 million in net proceeds forfeited.
- Up to 5% of any net proceeds forfeited between \$100 million and \$500 million.
- No award on net proceeds forfeited above \$500 million.

Corporate self-disclosure

The [amendment to the DOJ's Corporate Enforcement and Voluntary Self-Disclosure Policy](#) would provide a company that self-reports misconduct within 120 days of receiving an internal whistleblower complaint with highly favorable treatment by the DOJ – a “presumption of declination” – as long as the company fully cooperates and remediates.

Takeaways

Risk of race to report not eliminated

Through this new program, the DOJ is actively encouraging employees to report potential misconduct as quickly as possible – whether internally or directly to the DOJ – to be the first to come forth with original information. In Argentieri's words: “We are telling employees now is the time to come forward to the Criminal Division.”

Although there is some incentive for an individual to report internally to their employer first, this is not required. Whether an employee reports internally to their employer (either before or at the same time as reporting to the DOJ) is one of three factors the DOJ considers in favor of increasing the amount of the individual's award. But even if the employee decides to report internally, they **also** must independently and directly report the conduct to the DOJ within 120 days of their internal report in order to be eligible for an award.

Corporations should note that the internal reporting window does not necessarily delay the government's investigation. Although employees are provided 120 days to report to the DOJ after reporting internally, if they decide to report sooner, it is **unclear (but unlikely) that the DOJ will “wait”** that same 120 days before beginning an investigation. Companies should quickly and effectively investigate internal complaints, and should expect that if the complaint falls into the categories of offenses covered by this program, that the employee will, or may have already, gone to the DOJ in an effort to reap the financial rewards of the program.

Increased incentives for companies to act quickly after receiving a complaint

In conjunction with this pilot program, the DOJ issued a temporary amendment to its corporate voluntary self-disclosure program that provides companies who receive a whistleblower's report with 120 days to self-report to receive preferential treatment. However, according to [the DOJ's pilot program FAQ](#), companies can only get this benefit if they act **before** the government reaches out – even if the 120 days are not up.

This pilot program and the potential benefits to companies that self-report potential misconduct are further reason for companies to ensure that they not only have [robust internal complaint management processes](#) in place, but also that those processes are carried out with the DOJ's time constraints in mind. This policy includes a 120-day period during which the DOJ expects a company to investigate a claim and make a decision about coming forward and self-reporting to the DOJ. In other words, companies should move quickly and efficiently upon receiving internal complaints. Companies also should seriously consider bringing in outside counsel early to investigate potential issues and evaluate the possibility of self-reporting.

Understand who's eligible to participate in pilot program

It is important for companies to be conscious of which individuals are eligible to receive a benefit through this pilot program – although the pool is vast, the DOJ has placed specific limitations on program eligibility. An individual (or group of individuals) not eligible for an award through another US government or statutory whistleblower, *qui tam*, or similar program, may make a submission under this pilot program and potentially receive an award. Individuals who are elected or appointed public officials, company directors and officers, or those who were substantially involved in the alleged crime are **not eligible** to participate in the pilot program. Additionally, anyone whose job it is to facilitate the company’s compliance processes is ineligible, as well as company auditors, accountants and lawyers.

Notably, these eligibility criteria are more restrictive than those for [the DOJ's voluntary self-disclosure policy announced earlier this year](#), which offers non-prosecution agreements to individuals who voluntarily self-disclose information about certain corporate crimes. Nevertheless, even those who are “minimally” involved in the alleged criminal activity, whether they’re current or former employees, still stand to benefit from the new whistleblower program.

Heightened awareness for government contractors and healthcare companies

In addition to continuing to put pressure on crimes involving financial institutions and foreign corruption, this program demonstrates the DOJ’s focus on two more sectors: corrupt conduct involving US, state, and local government and healthcare fraud involving private entities such as insurers.

Companies whose work involves government contracts and companies operating in the healthcare sector should be aware of the DOJ’s new efforts to expand enforcement in these areas, starting with financial incentives for individual employees who step up and report.

Given the DOJ’s continued focus on corporate misconduct and compliance, all corporations – and particularly those potentially implicated by the subject matter of this program – should build out their compliance programs and internal reporting structures to both get ahead of any misconduct and be in position to timely address internal reports.

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