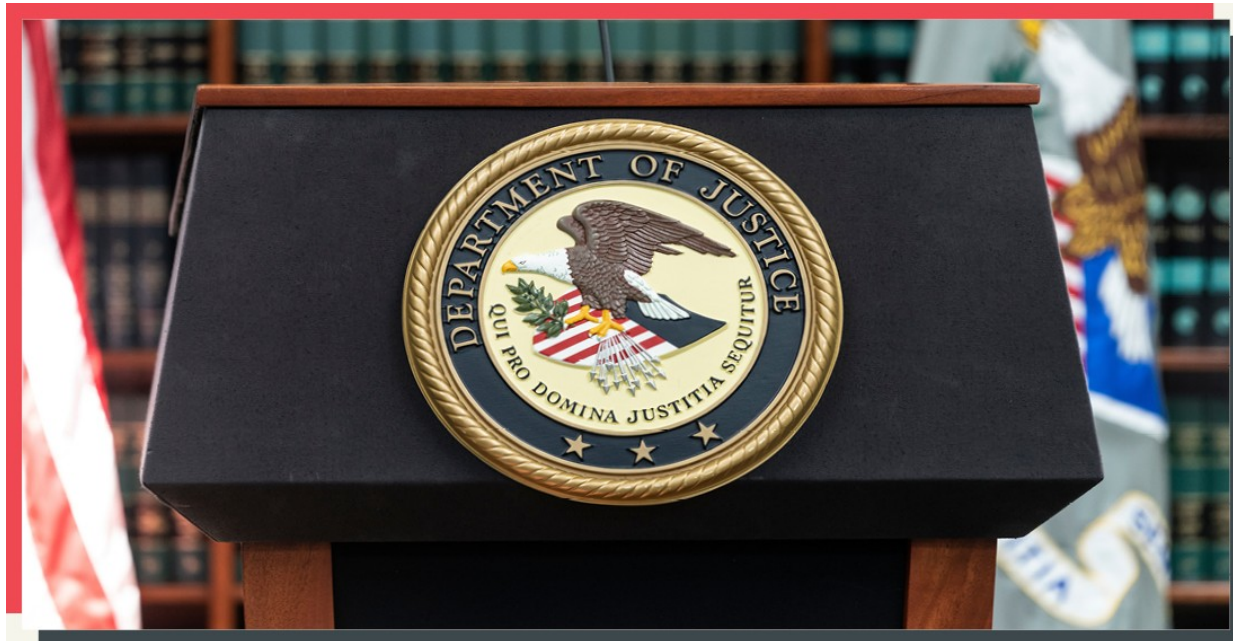


DOJ Implements New Corporate Whistleblower Awards Program

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On August 1, 2024, the Department of Justice's ("DOJ") Criminal Division formally began its new whistleblower program ("Pilot Program"), which offers monetary awards to individuals who report certain kinds of corporate misconduct. This program, which was announced by [Deputy Attorney General Lisa Monaco in March 2024](#), is a three-year initiative and the latest addition to a growing trend of [increasing whistleblower incentives](#).

Program Overview

According to the DOJ [fact sheet](#), the Pilot Program is "modeled on successful whistleblower programs run by the SEC, CFTC, and FinCEN, and seeks original information about corporate misconduct not covered by those programs." To qualify for an award, a whistleblower must provide truthful, complete, original, and non-public information related to one of the following areas:

1. certain crimes involving financial institutions;
2. foreign corruption involving privately held companies and others that are not issuers of U.S. securities;^[1]
3. domestic corruption involving companies; or
4. health care fraud schemes involving private insurance plans.

Whistleblowers must also fully cooperate with the DOJ and not have "meaningfully participated in the criminal activity they report."^[2]

The award itself is structured as a percentage of the net proceeds from the reported misconduct—if the DOJ finalizes a successful forfeiture, whistleblowers are eligible to receive up to 30% of the first \$100

million, and up to 5% of the net proceeds between \$100 and \$500 million. The award amount is further influenced by multiple case-specific factors, including the degree of assistance, whistleblower culpability, any unreasonable delay in reporting, and the significance of the information provided.

Corporate Implications

Although not directly aimed at corporations, the Pilot Program is neither designed to operate in a vacuum nor to serve as a substitute for internal company compliance mechanisms. Indeed, whistleblowers who first report information through internal channels remain eligible for an award, so long as they report the same information to the DOJ within 120 days.

Further, while the Pilot Program is geared at individuals, the DOJ has also amended its corporate incentives for the three-year duration of the Pilot Program. Now, if a company voluntarily self-reports misconduct within 120 days of receiving an internal whistleblower report, the company may be eligible for a presumption of declination under the Criminal Division's [Corporate Enforcement and Voluntary Self-Disclosure Policy](#), provided that the company reports to the DOJ before the DOJ contacts the company. Importantly, a company may be eligible for such a presumption even if it self-reports to the DOJ after a whistleblower report has already been made.

Finally, the DOJ announced the affirmative steps it will take to protect whistleblowers, including preserving confidentiality, permitting anonymous submissions, and protecting whistleblowers from corporate retaliation. To protect from retaliation, the DOJ will consider the use of retaliation as a factor in its determination of whether a company or an individual "cooperated" with the investigation. In the same vein, the DOJ has cautioned companies against trying to leverage confidentiality agreements to prevent disclosures, as this too will be a relevant factor in determining whether a company fully cooperated with a DOJ investigation.

Looking Forward

The Pilot Program will likely increase the number of DOJ inquiries faced by corporations. It remains to be seen how many of these inquiries will lead to formal investigations. Nonetheless, the expected uptick in DOJ scrutiny underscores the need for corporations to devote resources to enhancing internal compliance processes to prevent, remediate, and, when appropriate, promptly self-report misconduct.

[1] This is part of an effort to provide whistleblower incentives to foreign corruption cases that are not covered by the Securities and Exchange Commission's existing whistleblower program.

[2] This requirement intentionally goes a step further than the SEC, CFTC, and FinCEN whistleblower programs which limit award payments only to individuals who never "directed, planned, initiated, or were convicted of the misconduct they reported."

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