

PUBLICATION

Update: DOJ Launches Corporate Whistleblower Awards Program

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In March, the Department of Justice (DOJ) announced that a pilot program to incentivize individualized reporting was in development, which we reviewed here. True to its word, the DOJ's "Corporate Whistleblower Awards Pilot Program" (the Whistleblower Program) went into effect on August 1, 2024. Individuals can now submit "original and truthful information" directly to the DOJ's Criminal Division for potential reward for covered conduct. Specifically, the program covers certain financial crimes, public corruption, and private program health care fraud that were not previously subject to existing programs.

If a whistleblower's report results in the successful prosecution of any companies and/or individuals, that whistleblower may receive a portion of any forfeiture the DOJ secures – whether through a criminal or civil action. The Whistleblower Program is designed to "fill important gaps in existing federal whistleblower programs," so companies active in areas not subject to scrutiny through pre-existing whistleblower programs (*i.e.*, by the SEC or FinCEN, or pursuant to the False Claims Act) should ensure that their compliance programs are robust and effective to mitigate future risk in light of the new Whistleblower Program.

I. The Corporate Whistleblower Awards Program

Initially, the DOJ seeks to focus on the following areas, which are not subject to existing federal whistleblower programs:

1. "Certain crimes involving financial institutions and their employees;
2. Foreign corruption involving privately held companies and others that are not issuers of U.S. securities;
3. Domestic corruption involving companies; and
4. Health care fraud schemes targeting private insurers not subject to *qui tam* recovery under the False Claims Act."

Whistleblowers stand to make significant gains through a successful report – 30 percent of up to \$100 million in net forfeiture, and another five percent of up to \$500 million in net forfeiture. There are of course limits to the DOJ's generosity: no payments will be made: (a) if the resulting forfeiture is less than \$1 million; (b) to a whistleblower who "meaningfully participates," profits from, or otherwise plays more than a "minimal" role in the criminal activity they report; or (c) where a report does not "materially and significantly" contribute to successful forfeiture.

Notably, individuals are encouraged to report the potential misconduct *internally* as well as to the DOJ, so long as their report under the Whistleblower Program is made within 120 days of their internal company report. In fact, making an internal report "is a factor that may increase [the] award" – even if the company makes a self-disclosure as a result of that internal report. Whistleblower reports may be made anonymously through an attorney, and "DOJ is committed to protecting the confidentiality of those who submit information" in order to reduce potential retaliation.

II. How to Mitigate Risk

This Whistleblower Program is designed to "complement and strengthen" the DOJ's [Corporate Enforcement and Voluntary Self-Disclosure Policy](#) program (Corporate Enforcement Program or CEP, which we reviewed [here](#)) to incentivize corporate self-reporting. The key differences are the reporter and the incentive. Under the Corporate Enforcement Program, if a company or authorized corporate representative self-reports potential wrongdoing, that company may be eligible for a ***declination of prosecution***. Meanwhile, under this pilot Whistleblower Program, if an individual reports potential wrongdoing, they may be entitled to receive a portion of any ***monetary forfeiture*** secured by the DOJ as a result of the report.

Existing governmental whistleblower programs have proven effective, and the DOJ's criminal division appears keen on enjoying some success of its own. For example, in [FY 2023](#), the Securities and Exchange Commission (SEC) received more than 18,000 whistleblower tips – an almost 50 percent increase from its FY 2022 record. As a result, the SEC issued nearly \$600 million in whistleblower awards in FY 2023 alone. And so, this Whistleblower Program focuses on areas of financial crimes, public corruption, and private program health care fraud that were not previously subject to existing programs.

With both the Corporate Enforcement Program and the Whistleblower Program in play, companies should: (1) incentivize internal reporting and (2) conduct swift investigations of those reports so that any risks can be mitigated internally and, if necessary, any wrongdoing reported promptly under the CEP. Companies subject to investigation through a Whistleblower Program report, on the other hand, will not be able to enjoy the presumption of declination of prosecution through the CEP. In other words, if an individual wins the race to report potential corporate wrongdoing to the DOJ, their employer will find itself on the defensive. Companies that may be subject to this Whistleblower Program would therefore benefit from a review and "stress test" of their existing compliance programs to help mitigate risk going forward.

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