

DOJ Announces New Whistleblower Program

DOJ unveils a new whistleblower incentive program to complement the Department's continued efforts to encourage self-reporting of criminal violations.

On Thursday, March 7, 2024, US Deputy Attorney General Lisa Monaco announced a new Department of Justice (DOJ or Department) whistleblower incentive program that will compensate whistleblowers for reporting significant corporate or financial misconduct otherwise unknown to DOJ. The Department, led by the DOJ's Criminal Division, will design and implement the program over the next 90 days, with a formal start date later this year. In making the announcement, Deputy Attorney General Monaco made clear the new whistleblower program is the latest example of DOJ's broader focus on instituting policies designed to bring about a "culture of compliance" by incentivizing individuals and corporations to report potential violations and by holding wrongdoers accountable.

Whistleblower Incentive Program

As described by Deputy Attorney General Monaco, "[t]he premise is simple: if an individual helps the Justice Department discover significant corporate or financial misconduct — otherwise unknown to us — then the individual could qualify to receive a portion of the resulting forfeiture." The program rests on DOJ's statutory authority to pay awards for information or assistance leading to civil or criminal forfeitures, and will target "the full range of corporate and financial misconduct that the Department prosecutes."

DOJ's whistleblower incentive program follows last year's implementation of a nationwide self-disclosure policy aimed to incentivize corporations to timely self-report and remediate misconduct, in exchange for significantly reduced fines and potential declinations.¹ In line with that policy, earlier this year, the United States Attorney's Office for the Southern District of New York piloted a self-disclosure program offering eligibility for non-prosecution agreements to individuals who, despite having criminal liability, choose to self-report culpable conduct and cooperate with the government in prosecuting other, more culpable participants. The United States Attorney's Office for the Northern District of California announced a similar program earlier this week. According to Deputy Attorney General Monaco, having worked to encourage self-disclosure by criminally culpable individuals, the Department now wishes to "engage traditional corporate whistleblowers — the people not involved in the wrongdoing" — by providing monetary incentives to report misconduct by others. In the Department's view, "[t]hese incentives reinforce each other and create a multiplier effect, encouraging both companies and individuals to tell us what they know as soon as they know it."

Other civil regulators, including the US Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC), already have incentivized whistleblowers to come forward by

offering financial rewards. Those other regulators have established specific offices to manage their respective whistleblower programs; whether DOJ follows that same path will be an important development to monitor going forward.

Program Details and Eligibility Criteria

While the Department will be finalizing the requirements of the program over the next few months, Deputy Attorney General Monaco shared the following basic guardrails the DOJ has established:

- Whistleblowers will receive a portion of any forfeited proceeds only after victims have been compensated;
- Individuals who engaged in wrongdoing are not eligible for payments related to that wrongdoing; and
- The program does not apply to cases in which there is an existing financial disclosure incentive, such as a *qui tam* or other federal whistleblower program.

On Friday, March 8, Acting Assistant Attorney General for the Criminal Division Nicole Argentieri provided further details about the program:

- DOJ's Money Laundering and Asset Recovery Section (MLARS), together with the Criminal Division, will be at the forefront of designing and launching the program.
- The DOJ will award monetary incentives for original, non-public, truthful information, which is not already known to the Department and is provided voluntarily and not in response to any inquiry, existing reporting obligation, or imminent threat of disclosure.
- Like the SEC, the DOJ expects to set a monetary threshold for the enforcement actions that make a whistleblower eligible for an award. The specific amount is to be determined.

The Department also highlighted areas that were of specific interest, in which it hopes to see whistleblowers come forward, including:

- Criminal abuses of the US financial system;
- Foreign corruption, including FCPA violations by non-issuers, and violations of the Foreign Extortion Prevention Act; and
- Domestic corruption involving payments to government officials.

The program is intended to fill gaps in the existing framework, and the DOJ expects the program to be especially useful in developing foreign corruption cases in which the SEC does not have jurisdiction, such as FCPA violations by non-issuers. The Department has not yet specified how its whistleblower incentive program will impact or interact with the recently announced safe harbor policy for criminal misconduct discovered during the course of M&A transactions, and whether *corporations* will be eligible for whistleblower awards.²

Acting Assistant Attorney General Argentieri emphasized that the DOJ intends to use the next three months to gather information and consult stakeholders on the specific details of the program.

Practical Implications

Based on the impact of similar programs launched by other regulators, we expect that the DOJ program will substantially increase the volume of whistleblower tips to the Department. The SEC received more than 18,000 whistleblower tips in 2023 (almost 50% more than the previous record set in FY2022), and awarded nearly US\$600 million last year — the highest annual total by dollar value in the program's history. Over the course of 2022 and 2023, the CFTC received more than 3,000 whistleblower tips and paid nearly US\$350 million in awards — including a record-breaking US\$200 million award to a single whistleblower.

While the specifics of the DOJ's program are still under consideration, the DOJ made clear that companies should take the time to invest in their compliance programs now to identify any misconduct and be the first to report it — particularly if a company has “had a recent brush with the law.” In that regard, a critical focal point for the DOJ's assessment of corporate compliance programs will be how well the program mitigates the company's most significant risks — which, for a growing number of businesses, now includes the risk of misusing Artificial Intelligence (AI). Further careful assessment of corporate compliance policies will no doubt be required once the DOJ discloses the details of its whistleblower incentive program later this year.

Latham & Watkins' experienced white collar professionals stand ready to assist clients in evaluating their compliance and whistleblowing programs, assessing potential disclosable conduct, and crafting the best strategy for self-disclosure or responding to DOJ inquiries.

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Endnotes

¹ See Latham & Watkins Client Alert [DOJ's Updated Corporate Enforcement Policy Aims to Incentivize Compliance](#).

² See Latham & Watkins Client Alert [DOJ Announces Safe Harbor Policy for Voluntary Self-Disclosure of Criminal Misconduct Uncovered in M&A](#).