

White Collar, Government & Internal Investigations ADVISORY

MARCH 13, 2024

Yet More Carrots: DOJ Announces New Whistleblower Pilot Program

By [Kelley Barnaby](#), [Alicia Badley](#), and [Albert Stieglitz](#)

On March 7, 2024, U.S. Department of Justice (DOJ) Deputy Attorney General Lisa Monaco [announced](#) the DOJ's forthcoming launch of a whistleblower pilot program designed to incentivize reporting of "corporate and financial misconduct." The program, which will be launched following a "90-day sprint" by the DOJ to design and implement relevant policies and procedures, is intended to complement existing whistleblower programs at other federal agencies and is the latest in a series of DOJ initiatives aimed at incentivizing voluntary disclosures of criminal wrongdoing.

The Program

Specific details of the DOJ's whistleblower pilot program will be formulated in the weeks and months to come, but the essence of the program is the DOJ's offer of a financial reward to individuals who aid the DOJ in discovering "significant corporate or financial misconduct." The financial reward will be paid from funds recovered through forfeiture associated with DOJ enforcement actions related to the information such individuals report and will only be paid after all victims of the misconduct have been "properly compensated."

To be eligible for a payout under the program, reporting individuals cannot be involved in the misconduct they are reporting and must submit "truthful information not already known to the government." Moreover, there cannot be an "existing financial disclosure incentive," such as another whistleblower program, pursuant to which the reported information is or could be submitted.

Finally, although Monaco acknowledged that the DOJ will "always accept information about violations of any federal law," she explained that the DOJ's whistleblower pilot program will be particularly focused on three types of violations: (1) crimes related to the U.S. financial system; (2) foreign corruption cases outside the jurisdiction of the U.S. Securities and Exchange Commission (SEC) (including Foreign Corrupt Practices Act and Foreign Extortion Prevention Act violations); and (3) domestic corruption cases, especially corporate bribery of government officials.

Relevant Context

The DOJ claims that its whistleblower pilot program is intended to incentivize disclosures of "the full range of corporate and financial misconduct that the [DOJ] prosecutes," and that it will "fill gaps" created by the jurisdictionally limited whistleblower programs already in place at the SEC, Commodity Futures Trading Commission (CFTC), Internal Revenue Service (IRS), and U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN).

The announcement of the DOJ's whistleblower pilot program follows the February 2024 rollout by the U.S. Attorney's Office for the Southern District of New York (SDNY) of a Whistleblower Pilot Program of its own (analyzed in a previous Alston & Bird client advisory available [here](#), and reportedly soon to be duplicated by the U.S. Attorney's Office for the Northern District of California). The SDNY's program differs from the outline of the program previewed by Monaco, however, most notably by offering the possibility of a nonprosecution agreement to individuals disclosing misconduct rather than the possibility of a financial reward. Each program therefore aims at a different type of potential whistleblower: those who may have criminal exposure due to involvement in misconduct and are explicitly barred from receiving a payout under the program previewed by Monaco; and those with no criminal exposure for which they might desire nonprosecution protection and so have little to gain by reporting to the SDNY. Whether the SDNY's program yields more actionable information from "insiders" to potentially criminal schemes than the program announced by Monaco remains to be seen.

Compliance, Compliance, Compliance

In announcing the DOJ's new whistleblower pilot program, Monaco highlighted the importance of "encourag[ing] investments in building a culture of compliance," and corporate compliance was a theme she returned to several times during her remarks on the program and other related topics. In discussing the DOJ's approach to recidivist companies, for example, she emphasized that "[i]f your company has had a recent brush with the law, now is the time to invest – and reinvest – in your compliance programs." In explaining the value of companies voluntarily self-reporting misconduct to the DOJ, she claimed a desire to "empower" general counsel and compliance officers "to make the business case for investing in compliance." And in explaining the "basic guardrails" of the whistleblower pilot program, she noted that "it will drive companies to invest further in their own internal compliance and reporting systems."

These more "empowering" messages were accompanied by Monaco's more ominous statement that companies should "knock on our door before we knock on yours," which echoes prior DOJ comments and is all the more meaningful when made contemporaneously with the opening of a significant new avenue for the reporting of corporate misconduct. Monaco reminded her audience that "no one wants to be second" when it comes to identifying and reporting misconduct, and the DOJ's new whistleblower pilot program is yet another reason for companies to review, update, and strengthen internal controls and compliance programs to ensure they are designed and implemented in a way that maximizes the likelihood that any misconduct will be deterred entirely or at least promptly detected and addressed. Failure to optimize compliance programs and other internal controls for maximum deterrence and detection capability will, among other things, deprive companies of the critically important opportunity to proactively investigate and assess options for next steps to address potential misconduct. Doing so leaves companies in a reactive posture to DOJ scrutiny that is even more likely to have been prompted by a whistleblower report as a result of the DOJ's new program.

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