

Client Alert | [March 13, 2024](#)

## DOJ's Pilot Whistleblower Program: What Does It Mean for Businesses?



Deputy Attorney General Lisa Monaco announced on March 7 that the U.S. Department of Justice (DOJ) will [launch a pilot whistleblower program](#) that will offer financial incentives for individuals to report allegations of criminal wrongdoing to the DOJ. The program will be launched later this year following a 90-day process to develop and implement the pilot. The new initiative will expand upon the DOJ's recent efforts to incentivize voluntary self-disclosure and will create a counterpart program to those already underway at the U.S. Securities and Exchange Commission (SEC), Commodity Futures Trading Commission, Internal Revenue Service and Financial Crimes Enforcement Network. The program will also serve as an alternative to qui tam actions, which offer their own whistleblowing incentives but are limited to cases of fraud against the government.

In Monaco's announcement, she stated that the DOJ's whistleblower program rests on the premise that "if an individual helps DOJ discover significant corporate or financial misconduct — otherwise unknown to [DOJ] — then the individual could qualify to receive a portion of the resulting forfeiture." An individual will be entitled to a whistleblower payment at the conclusion of a criminal proceeding resulting in a conviction where: (1) all victims have already been properly compensated; (2) the information the individual provides to the DOJ is not already known to the government; (3) the individual is not involved in the criminal activity itself; and (4) there is not an existing financial disclosure incentive, such as through the qui tam program.

Monaco emphasized certain categories of cases that would be most lucrative to whistleblowers and should be most concerning to businesses. She explained that the DOJ is "especially interested in information about" the following: "criminal abuses of the U.S. financial system; foreign corruption cases outside the jurisdiction of the SEC, including [Foreign Corrupt Practices Act] violations by non-issuers and violations of the recently enacted Foreign Extortion Prevention Act; and domestic corruption cases, especially involving illegal corporate payments to government officials."

This new DOJ whistleblower program is designed to parallel and supplement the SEC's existing whistleblower program and assist in cases outside the SEC's jurisdiction. Like the SEC's whistleblower program, the DOJ's program will allow whistleblower awards only in cases involving penalties above a certain, yet to be determined, monetary threshold. Because of the high monetary threshold, the program will target only the most significant criminal conduct and motivate individuals to report large-dollar cases.

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The SEC's whistleblower program has [paid over \\$1.9 billion since its creation in 2011](#), including nearly \$600 million in the last year alone. Unlike the SEC program, which focuses on public companies, U.S. listed entities and regulated entities under the SEC's purview, this new DOJ program is notable because it will incentivize individuals to report on misconduct at companies and organizations not otherwise covered by the SEC's program, including purely private corporations, partnerships and even nonprofits.

### What Actions Should Companies Take Now?

In an effort to anticipate the impact of the new DOJ program on businesses, the SEC's whistleblower program provides guidance in predicting the potential key implications of the DOJ program and how businesses can best prepare for these new policies:

- We expect the DOJ pilot program will add to the existing complexity surrounding the decision on whether and when an entity should self-report misconduct to the DOJ. The program's incentives may increase the likelihood that employees will report misconduct directly to the DOJ instead of internally reporting to their employers. Companies will face a greater dilemma in deciding whether and when to self-report to the DOJ, knowing that benefits to companies for self-disclosure only exist if the government is unaware of the misconduct. Any disclosure and its timing will need to be even more carefully considered.
- Given the potential financial reward for reporting misconduct directly to the DOJ, companies will likely face more challenges in encouraging employees to report misconduct internally. A key takeaway is that companies should act now to create or optimize a framework that further encourages employees to report potential misconduct internally. Therefore, it is imperative that companies use the time before the pilot program is implemented to evaluate and review their existing compliance policies and procedures, including internal hotlines and other reporting mechanisms, to ensure that they are straightforward and may be thoughtfully utilized by employees. The goal is to create an environment where employees know that their disclosures will be promptly and appropriately handled so employees do not need to turn to the government for assistance.
- Entities covered by the SEC's regulations are prohibited from taking actions that can be seen as restricting employees from reporting misconduct to the SEC, such as including provisions in employment policies, nondisclosure agreements or severance agreements that prohibit such voluntary disclosure. Companies should utilize the time before the DOJ pilot program is implemented to review employment policies, settlement agreements, severance agreements and the like to remove any language prohibiting voluntary government disclosure.

Ultimately, it is important to ensure that employees do not feel motivated to go outside of their companies to make reports to the DOJ despite the new incentives being put in place. While more about the DOJ program will be released in the upcoming weeks and months, companies can take steps now to ensure they are prepared for the impact of these new policies.



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