

# DOJ Announces Whistleblower Rewards Pilot Program

March 8, 2024

On March 7, 2024, Deputy Attorney General Lisa Monaco announced that the Department of Justice will launch a pilot program offering financial incentives for individual whistleblowers to report wrongdoing to DOJ.<sup>1</sup> This program will continue a longstanding effort by U.S. enforcement authorities to implement policies designed to incentivize voluntary disclosure of misconduct, and for the first time will create a DOJ counterpart to the whistleblower programs run by the SEC and other regulatory enforcement agencies such as the CFTC, IRS and FinCEN.

In Monaco's announcement and subsequent remarks by Acting Assistant Attorney General Nicole M. Argentieri, DOJ outlined several key aspects of the new program, which will be launched later this year following a 90-day process to develop and implement the pilot:

- The core principle of the program is 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.”
- Under DOJ's program, a whistleblower payment will be available only if certain conditions are met: (i) all victims have been appropriately compensated; (ii) the whistleblower provides truthful information not already known to DOJ; (iii) the whistleblower is not involved in the criminal activity; and (iv) no other relevant financial disclosure incentive exists (e.g., *qui tam* or other government whistleblower programs). The third condition contrasts significantly with the SEC's whistleblower program, under which a culpable individual is eligible to receive an award so long as they are not convicted of a criminal violation that is related to the matter for which

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<sup>1</sup> U.S. Dep't of Justice, “Deputy Attorney General Lisa Monaco Delivers Keynote Remarks at the American Bar Association's 39th National Institute on White Collar Crime” (Mar. 7, 2024), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-keynote-remarks-american-bar-associations>; see also U.S. Dep't of Justice, “Acting Assistant Attorney General Nicole M. Argentieri Delivers Keynote Speech at the American Bar Association's 39th National Institute on White Collar Crime” (Mar. 8, 2024), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-keynote-speech-american>.

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they would receive an award. That said, an individual who was involved in criminal misconduct may decide to pursue a non-prosecution agreement through a program run by the U.S. Attorney’s Office for the Southern District of New York or Northern District of California.<sup>2</sup>

- DOJ’s goal is to use this program to “fill gaps” in existing whistleblower programs run by regulatory enforcement agencies.<sup>3</sup> Thus, DOJ is most interested in receiving information about: (i) criminal conduct involving the U.S. financial system; (ii) foreign corruption cases that are outside the SEC’s jurisdiction, “including FCPA violations by non-issuers and violations of the recently enacted Foreign Extortion Prevention Act”;<sup>4</sup> and (iii) domestic corruption cases. Argentieri’s remarks placed particular emphasis on the development of foreign corruption cases.
- DOJ’s Money Laundering and Asset Recovery Section will take a leading role in developing and administering the program, which, based on Monaco’s and Argentieri’s remarks, appears to be limited to cases involving forfeiture.
- Like the SEC and CFTC whistleblower programs, DOJ’s program will allow whistleblower awards only in cases involving penalties above a certain monetary threshold—although the specific threshold has not yet been determined.

For companies, this pilot program will likely have several significant ramifications:

- Companies that identify potential criminal misconduct already face a highly complex and challenging decision in evaluating whether, and when, to self-report that conduct to DOJ. The launch of this pilot program adds to the complexity of that decision. We expect that the program will increase the likelihood of individual employees deciding to report the misconduct to DOJ without notifying their companies—which, in turn, would significantly decrease the benefits to the companies if they decide to self-report, as such benefits are available only if the

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<sup>2</sup> Debevoise & Plimpton LLP, “SDNY Whistleblower Pilot Program Incentivizes Self-Disclosure and Cooperation” (Jan. 16, 2024), <https://www.debevoise.com/insights/publications/2024/01/sdny-whistleblower-pilot-program-incentivizes>.

<sup>3</sup> Although Monaco stressed that this program is intended to “fill gaps” in other whistleblower programs and “create new incentives,” she offered two hypothetical examples—of a startup paying bribes for regulatory approvals and doctoring its books and of a private equity firm whose CFO is forging loan documents—both of which likely would constitute securities violations that could be reported via the SEC’s whistleblower program. Thus, it remains to be seen whether, and to what extent, DOJ’s program overlaps with other whistleblower programs and whether it will lead to whistleblowers reporting to multiple enforcement authorities in order to maximize their chances of recovery.

<sup>4</sup> Debevoise & Plimpton LLP, “Congress Passes Foreign Extortion Prevention Act, Targeting ‘Demand Side’ of Foreign Bribery” (Dec. 15, 2023), <https://www.debevoise.com/insights/publications/2023/12/congress-passes-foreign-extortion-prevention-act>.

government is not already aware of the misconduct. Thus, this program adds to the pressure on companies to self-report and to do so promptly.

- This program—like whistleblower programs run by the SEC and other agencies—may create additional challenges for companies’ efforts to encourage employees to report misconduct via internal channels, such as a compliance hotline. It is therefore all the more important for companies to ensure that their internal whistleblower systems are well designed and well understood by employees.
- Companies already face potential regulatory sanctions if they take actions that the SEC views as restricting employees from reporting misconduct to the SEC. But the launch of this program increases the risk that such actions could also result in serious criminal consequences. If DOJ adopts a position similar to the SEC, a company’s interference with a whistleblower’s communications with DOJ potentially could be deemed obstruction of justice.

We expect to learn more details about this program in the coming weeks and months, and will be monitoring further developments closely.



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