

# 'Help wanted': Justice department debuts its Corporate Whistleblower Awards Pilot Program

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On August 1, 2024, Deputy Attorney General Lisa Monaco unveiled<sup>1</sup> the Department of Justice's new Corporate Whistleblower Awards Pilot Program.<sup>2</sup> The announcement marks the conclusion of the Department's previously announced "sprint" towards a pilot program, as DAG Lisa Monaco first previewed<sup>3</sup> back in March of this year.

Under this three-year pilot, whistleblowers who voluntarily provide DOJ with "original" information that leads to a successful corporate prosecution may be rewarded with a share of the resulting forfeiture.

As detailed in a fact sheet<sup>4</sup> released in parallel with the announcement, DOJ views the program as instrumental towards a number of key objectives, among those: filling gaps in existing federal whistleblower programs; "supercharging" DOJ's corporate investigations efforts; complementing DOJ's existing tools for corporate accountability; and further incentivizing corporate investment in robust compliance programs and internal reporting systems.

## **Criteria and caveats with a focus on corruption, financial institutions, and healthcare fraud**

The pilot program is limited to misconduct involving: (1) certain crimes involving financial institutions, from traditional banks to cryptocurrency businesses; (2) foreign corruption involving misconduct by companies, including violations under the Foreign Corrupt Practices Act, Foreign Extortion Prevention Act, and violations of the money laundering statutes; (3) domestic corruption involving payment of bribes or kickbacks to public officials; or (4) health care fraud schemes involving private insurance plans, violations related to fraud against patients, investors and other non-governmental entities, and any other federal violations involving conduct related to health care not covered by the Federal False Claims Act.

For whistleblowers to be eligible for a reward, the corporate prosecution must result in a forfeiture greater than \$1 million. Among additional limiting criteria, whistleblowers cannot:

- be meaningfully involved in the misconduct at issue;

- have obtained the information through their work as a compliance officer or internal auditor of a company;
- be employed by the Department or be an immediate family member of a Department employee; or
- have received the information from an ineligible person or otherwise with intent to bypass any provision of the pilot program.

Further, whistleblowers are ineligible if they could have pursued a reward through a different U.S. government whistleblower program or *qui tam* action, and they must cooperate with DOJ in subsequent investigations and/or any formal proceedings.

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Assuming whistleblowers satisfy the conditions of the pilot, the potential payout is significant: the program promises awards of up to 30% of the first \$100 million in net proceeds forfeited by companies, and 5% for net proceeds forfeited between \$100 and \$500 million.

While there is no additional award for net proceeds over \$500 million, there is a presumption the Department will award a whistleblower the maximum 30% of the first \$10 million in net proceeds forfeited.

In consideration of an appropriate award amount (which is at the Department's sole discretion) the pilot program also details factors that could increase, or decrease, a given whistleblower's reward. Notably, a whistleblower's participation in internal compliance and/or reporting processes is a factor that could warrant an increased reward. Conversely, a whistleblower's interference with such processes could lead to a decreased amount.

## Intersection with corporate enforcement and voluntary self-disclosure policy

According to DOJ, the program is designed to complement existing DOJ initiatives that encourage corporate self-reporting.

To that end, via a new “temporary amendment”<sup>5</sup> to its Corporate Enforcement and Voluntary Self-Disclosure Policy (CEP), when a company receives an internal report from a whistleblower and reports the misconduct to DOJ within 120 days — even if a whistleblower does so before the company — the company is still eligible for a presumption of a declination assuming it otherwise satisfies the CEP’s requirements.

### *The new pilot program underscores DOJ’s commitment to fostering a corporate culture of integrity and accountability.*

This timeline, while providing an important safe harbor, places increased pressure on companies to make decisions quickly concerning whether to self-disclose or not.

## About the authors



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## Spotlight on ethical and transparent corporate culture

The new pilot program underscores DOJ’s commitment to fostering a corporate culture of integrity and accountability, and sends a clear message to would-be whistleblowers and corporate entities alike.

For individuals, the incentives to come forward with knowledge of corporate misconduct are stronger than ever. For executives and company leaders, the message is equally clear: DOJ is deploying additional tools to detect and address corporate misconduct.

Companies should take stock of their internal reporting processes and continue to invest in compliance measures to prevent, identify, and address misconduct proactively. Crowell attorneys are well-positioned to advise companies on all of these issues, including how best to tailor internal processes to account for these new — and evolving — developments.

### Notes:

<sup>1</sup> <https://bit.ly/4dHAtou>

<sup>2</sup> <https://bit.ly/4dnIKld>

<sup>3</sup> <https://bit.ly/4e4PUrh>

<sup>4</sup> <https://bit.ly/3STgawB>

<sup>5</sup> <https://bit.ly/4dCTOTO>