

Main Justice Launches a 90-Day “Policy Sprint” to Launch a Whistleblower Rewards Program

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On March 7, 2024, [Deputy Attorney General Lisa Monaco announced the launch of a 90-day sprint to develop and implement a pilot program for DOJ’s latest “carrot” to incentivize companies to invest in a culture of compliance: a whistleblower rewards program](#). In an address at the American Bar Association’s 39th National Institute on White Collar Crime, Monaco explained: “[t]he premise is simple: if an individual helps DOJ discover significant corporate or financial misconduct — otherwise unknown to us — then the individual could qualify to receive a portion of the resulting forfeiture.” This program marks the latest development in a series of changes to the Department of Justice’s (DOJ) corporate criminal enforcement policies that Monaco has implemented since [October 2021](#). These efforts all reflect DOJ’s focus on [individual accountability, punishing recidivist misconduct, prioritizing compliance and responsible corporate citizenship](#), and [promoting self-disclosure](#).

What Is the Whistleblower Rewards Program?

The pilot program would offer payments to whistleblowers only after all victims have been properly compensated and only to those who submit voluntary, truthful information not already known to the government and who were not involved in the criminal activity itself. Furthermore, the whistleblower rewards program will only be applicable in cases where there is not an already existing financial disclosure incentive (e.g., *qui tam* or other federal whistleblower programs).

This new program is intended to “fill gaps” left by what Monaco described as a “patchwork quilt” of limited whistleblower programs, such as the whistleblower programs at the Securities and Exchange Commission (SEC), Commodity Futures Trading Commission (CFTC), Internal Revenue Service (IRS), and the Financial Crimes Enforcement Network (FinCEN). As Monaco stated, other federal agencies’ existing programs “are limited in scope,” and “don’t address the full range of corporate and financial misconduct that the department prosecutes.” By establishing a targeted program, DOJ hopes to create new incentives for individuals to report misconduct and drive companies to further invest in their internal compliance and reporting systems.

Whistleblower programs have proven to be successful in the past. For example, as of November 2023, [the SEC awarded more than \\$1.9 billion to 397 individual whistleblowers since the launch of its](#)

[whistleblower program in 2011](#). In Fiscal Year 2023 alone, the SEC received a record 18,000 whistleblower tips, almost 50% more than the previous record set in Fiscal Year 2022. In May 2023, [one whistleblower earned an almost \\$279 million award](#), the largest in the history of SEC's whistleblower program, for providing information and substantial ongoing assistance to an SEC investigation and another federal agency's investigation. DOJ likely seeks to replicate the success of whistleblower programs like the SEC's whistleblower program to increase government recoveries and galvanize the plaintiffs' bar.

What Do We Know About the 90-Day Policy Sprint?

DOJ will be building a pilot program over the next 90 days with plans for it to go into effect later in 2024, according to Monaco. On March 8, 2024, the day after Monaco announced the launch of the policy sprint, [Acting Assistant Attorney General Nicole M. Argentieri elaborated on the process of this policy sprint](#). She stated that DOJ's Criminal Division, and especially the Criminal Division's Money Laundering and Asset Recovery Section (MLARS), will be at the forefront of the policy sprint. MLARS is playing a leading role in designing the pilot program because DOJ's statutory authority under Title 28 of the U.S. Code is tied to DOJ's forfeiture program. Accordingly, MLARS will work with U.S. Attorneys, the FBI, and other DOJ offices to develop guidelines addressing eligibility requirements for potential whistleblowers. Additionally, DOJ expects to establish a monetary threshold as a way of focusing DOJ's resources on what it deems to be the most significant cases. Argentieri signaled that DOJ would be seeking public input about what the proper monetary threshold would be.

Practical Implications of the Pilot Program

Although the specifics of the program have yet to be determined, the few details that Monaco and Argentieri shared point to two practical implications we can expect from the pilot program: (1) whistleblowers who seek to benefit from the program will have to be the "first in the door" and cannot have participated in the misconduct (in contrast to some programs, like the SEC whistleblower program, which allows awards to those who participated in the misconduct); and (2) we can expect increasing activity in the context of alleged Foreign Corrupt Practices Act (FCPA) violations.

"First in the door"

Much like with DOJ's Voluntary Self-Disclosure (VSD) programs, a whistleblower must be the "first in the door" to benefit from the whistleblower rewards program. Monaco explained that the incentive to be the first to report to DOJ—both in this pilot program and DOJ's VSD programs—creates a "multiplier effect, encouraging both companies and individuals to tell us what they know as soon as they know it." Monaco continued, "This helps us build the strongest criminal cases against the most culpable wrongdoers. It helps us impose the most significant penalties on those who most deserve it. And it helps us use our carrots to wield larger sticks." Accordingly, individuals and entities who were involved in criminal misconduct—and are thus ineligible to participate in the whistleblower rewards program—will have to race others attempting to benefit from the whistleblower rewards program to qualify for the benefit of DOJ's VSD programs.

FCPA Enforcement, Domestic Corruption, and Other Gaps

Although individuals and entities under the regulatory jurisdiction of agencies such as the SEC, CFTC, IRS, and FinCEN already have to contend with the potential for whistleblowers, the new DOJ whistleblower rewards program creates new potential fronts for whistleblower activity. In her remarks, Argentieri stated that DOJ anticipates that the whistleblower rewards program "could prove

especially useful in developing foreign corruption cases that are outside the jurisdiction of the SEC, including FCPA violations by non-issuers.” DOJ also highlighted their hopes that this new program would lead to new tips related to criminal abuses of the U.S. financial system and domestic corruption cases involving illicit payments to government officials. Therefore, individuals and privately held companies will likely need to consider recalibrating their risk assessments to account for the expanded risk for whistleblower activity under the FCPA and other criminal statutes.

Concluding Thoughts

This development out of Main Justice is in line with the broader sweep of the Biden administration’s focus on encouraging self-reporting of white-collar crimes. Given the success of whistleblower programs at other federal agencies such as the SEC and CFTC, the DOJ policy is a continuation of that trend. But it also follows on the heels of two US Attorneys’ Offices that have or will soon have VSD programs: the Southern District of New York (which launched a Whistleblower Pilot Program in February 2024) and the Northern District of California (not yet launched).

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