

# DOJ Announces Changes to Guidance on Corporate Compliance Programs, Updates on Whistleblower Program

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In an [address](#) this week to the Society of Corporate Compliance and Ethics, Principal Deputy Assistant Attorney General Nicole M. Argentieri of the Department of Justice's ("DOJ") Criminal Division, highlighted several updates relevant to corporate compliance programs, including the DOJ's new whistleblower programs and incentives.

## Sufficient Compliance: Updated Areas to Consider

The [Evaluation of Corporate Compliance Programs](#) ("ECCP") is the compass by which the DOJ measures the efficacy of a corporation's compliance program for potential credit or mitigation in the event an organization is potentially subject to prosecution.[1] Ms. Argentieri highlighted several key updates to the ECCP that the DOJ will now consider when evaluating whether a corporation's compliance program is "effective" and thus deserving of credit and/or mitigation of criminal penalties.

These new factors include whether:

- the resources and technology with which a company does business are applied to its compliance program, and whether its compliance program fully considers the risks of any technologies it utilizes (such as generative AI)[2];
- the company had a culture of "speaking up" and protecting those who report on corporate misdeeds;
- a company's compliance department had access to adequate resources and data to perform its job effectively; and
- a company learned from its past mistakes—and/or the mistakes of other companies.

## Encouraging Self-Reporting: Presumptive Declination and Reduced Penalties

In her remarks, Ms. Argentieri stated that the previously announced [Whistleblower Awards Program](#)

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[3] had so far been successful in the eyes of the DOJ, but did not point to any specific case or outcome. Likely, it is too soon for the public to see the fruits of the program, given its nascent state and the time that usually elapses between the initiation of an investigation and its resolution. The DOJ appears to be stating, though, that it is receiving and following up on whistleblower reports already.

This new policy encouraging whistleblowing through financial incentives, however, was combined with an amendment to DOJ's [Corporate Enforcement and Voluntary Self-Disclosure Policy](#), which provides that there is a presumptive declination to prosecute should a company make a disclosure of wrongdoing within 120 days of receiving an internal report of alleged misconduct and before DOJ contacts the company regarding that matter. In short, DOJ is seeking to incentivize a “race to DOJ” to report potential misconduct – perhaps before the company can even confirm whether the allegation is credible.[4]

Organizations that opt to not take the early self-disclosure route can still reduce any criminal penalties they may face by up to half by fully cooperating with the DOJ in its investigation. Considerations DOJ will factor in when evaluating whether an organization “fully cooperates” include, among other things, how timely the cooperation was and if the company took appropriate remedial action (such as improving compliance programs and disciplining employees). The DOJ continues to emphasize the importance of clawing back compensation and/or reducing compensation and bonuses of wrong-doers (if not also terminating them).[5]

## Tipping the Scales

In sum, these programs are clearly intended to materially alter the disclosure calculus of whether a company should disclose misconduct by putting quantifiable incentives on the side of timely disclosure and cooperation, namely declination. Combined with the DOJ's updates to the ECCP, these programs attempt to bring clarity and consistency to the world of corporate criminal penalties (and possibly how to avoid them altogether). Companies are well-advised to review their existing compliance programs in light of these new incentives and guidance from the DOJ to ensure that they address the new factors enumerated by the DOJ, but also account for increased incentives for corporate whistleblowers.

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## FOOTNOTES

[1] The U.S. Sentencing Guidelines also define what constitutes an “effective compliance and ethics program” for credit under the guidelines. U.S.S.G. §8B2.1.

[2] This is not the first time, and unlikely to be the last, where DOJ has emphasized the use of AI to enhance corporate compliance. See Lisa Monaco, Deputy Attorney General, Department of Justice, [Remarks at the University of Oxford on the Promise and Peril of AI](#) (Feb. 14, 2024).

[3] Under the Criminal Division's whistleblower pilot program (and like those of other U.S. Attorney's Offices who have thus far adopted similar programs), whistleblowers are financially rewarded—through criminal forfeiture orders—for bringing forward information on specific alleged violations, so long as that person first reports the misconduct to the company and DOJ has not already learned of it. The Criminal Division's [Pilot Program on Voluntary Self-Disclosure for Individuals](#) also provide culpable individuals who report to receive non-prosecution agreements in exchange for reporting their own conduct and the conduct of the company.

[4] The “race to DOJ” incentivized by these programs may indeed alter the corporate disclosure calculus—by moving up the date for any disclosure in light of the threat that an employee or third-party, aware of any investigation, may choose to report the matter to DOJ. Likewise, it may also change the nature of the internal investigation in ways to limit knowledge of the investigation early-on, like limiting early interviews until documents and data can be reviewed and analyzed.

[5] Indeed, DOJ will permit companies to earn a dollar-for-dollar reduction of a criminal penalty for each dollar a company successfully claws back from a wrong-doer to further incentivize companies to seek to claw back compensation paid.

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