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DOJ Criminal Division Updates (Part 2): Department of Justice Updates its Corporate Criminal Whistleblower Awards Pilot Program

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On August 1, 2024, the Department of Justice's (DOJ) Criminal Division launched a three-year Corporate Whistleblower Awards Pilot Program (the "Pilot Program"). (See Part 1 and Part 3 of this series for more information.) The Pilot Program marked a significant effort by the DOJ to enhance its ability to fight corporate and white collar crime by enlisting whistleblowers to aid in the effort. On May 12, 2025, the DOJ released updated guidance (the "Updated Guidance") related to the Pilot Program in order to reflect the updated enforcement priorities and policies of the administration under President Trump, also announced on May 12, 2025. In this article, we provide an overview of the Pilot Program and lay out the recent changes to the guidance.

Overview of the Pilot Program

As originally announced in August 2024, the Pilot Program allowed for financial recovery for whistleblowers who provided successful tips relating to "possible violations of law" for four categories of crimes: (1) foreign corruption and bribery, (2) financial institution crimes, (3) domestic corporate corruption, and (4) health care fraud involving private insurance plans.

Eligibility & Key Terms

To be eligible, potential whistleblowers must meet the following criteria:

- **Financial Threshold.** To qualify under the Pilot Program, the information provided must lead to a successful forfeiture exceeding $1 million.
- **Originality.** The information provided by the whistleblower must be based on the individual's independent knowledge and cannot be already known to the DOJ. Information obtained through privileged communications is excluded from the DOJ consideration.
- **Lack of "Meaningful Participation" in the Reported Criminal Activity.** A whistleblower is ineligible for an award if they "meaningfully participated" in the activity they are reporting. Pilot Program guidance provides that an individual who was "directing, planning, initiating, or knowingly profiting from" the criminal conduct reported is not eligible. Conversely, someone who was involved in the scheme in such a minimal role that they could be "described as plainly among the least culpable of those involved" would be able to recover an award under the Pilot Program.
- **Truthful and Complete Information.** To qualify for an award, a whistleblower must provide all information of which they have knowledge, including any misconduct they may have participated in. If a whistleblower withholds information, they are ineligible to recover an award under the Pilot Program. This requirement includes full cooperation with the DOJ in any investigation, including providing truthful testimony during interviews, before a grand jury, and at trial or any other court proceedings and producing all documents, records, and other relevant evidence.

Award Structure

If eligible, a whistleblower may be entitled to a discretionary award of up to 30% of the first $100 million in net proceeds forfeited and up to 5% of the next $100–$500 million in net proceeds forfeited. Under relevant criminal forfeiture statutes, proceeds are forfeitable only if they are derived from or substantially involved in commission of an offense. In this way, net proceeds forfeited may be less than actual loss.

Unlike other similar whistleblower programs, any award pursuant to the Pilot Program is fully discretionary — there is no guaranteed minimum amount that a whistleblower will recover. In determining whether a whistleblower will receive an award, it will consider whether the information provided was specific, credible, and timely and also whether the information significantly contributed to forfeiture. The DOJ also assesses the whistleblower's level of assistance and cooperation throughout the investigation.

Corporate Self-Disclosure

The Pilot Program gives companies a 120-day window to self-disclose information related to an internal whistleblower report. Companies choosing to self-disclose "misconduct" covered by the Pilot Program within the allotted 120-day window will remain eligible for a presumption of declination (i.e., no prosecution) under the Corporate Enforcement and Voluntary Self-Disclosure Policy, which also was updated as announced on May 12, 2025 (the "Self-Disclosure Policy"). This 120-day window applies even if the whistleblower has already reported misconduct to the DOJ.

Companies choosing to self-disclose also must meet the other requirements of the Self-Disclosure Policy to qualify for a presumption of declination. In addition to a timely self-disclosure, companies must cooperate fully with the investigation, identify responsible individuals, remediate all harms, and disgorge ill-gotten gains.

Changes in the May 2025 Updated Guidance

The Updated Guidance reaffirms the DOJ's commitment to the Pilot Program and does not change that the program will run for three years unless otherwise announced. The majority of the specifics of the Pilot Program remain unchanged, including the requirements for whistleblower eligibility, the self-disclosure policy, and the amount that whistleblowers stand to gain.

The primary update is a change to the subject matter to which a whistleblower's report must pertain in order to be eligible for recovery. Under the Pilot Program as initially announced, information provided by a whistleblower must have related to the following substantive areas:

- Violations by financial institutions such as money laundering, failure to comply with anti-money laundering compliance requirements, and fraud against or non-compliance with financial institution regulators.
- Violations related to foreign corruption and bribery, including violations of the Foreign Corrupt Practices Act, money laundering statutes, and the Foreign Extortion Prevention Act.
- Violations related to the payment of bribes or kickbacks to domestic public officials.
- Violations related to federal health care offenses involving private or non-public health care benefit programs, where the overwhelming majority of claims were submitted to private or other non-public health care benefit programs.
- Violations related to fraud against patients, investors, or other non-governmental entities in the health care industry, where these entities experienced the overwhelming majority of the actual or intended loss.
- Any other federal violations involving conduct related to health care not covered by the federal False Claims Act (FCA).

In its Updated Guidance, the DOJ removes certain language from these categories thus broadening the substantive reach of the Pilot Program:

- Removes the requirement that violations related to federal health care offenses involve "private or non-public" health care benefit programs.
- Removes the requirement that the overwhelming majority of claims for federal health care offenses were submitted to private or other non-public health care benefit programs.
- Removes the requirement that patients, investors, or other non-governmental entities experience the overwhelming majority of actual or intended loss.
- Removes entirely the qualifying category for reports involving health care-related violations not covered by the FCA.

Consistent with the Trump administration's focus on tariffs, immigration, and cartels, among other enforcement priorities, the DOJ adds priority subject-matter areas that now qualify for a potential whistleblower award:

- Violations related to fraud against, or deception of, the United States in connection with federally funded contracting or federal funding that does not involve health care or illegal health care kickbacks.
- Violations related to trade, tariff, and customs fraud.
- Violations related to federal immigration law.
- Violations related to corporate sanctions offenses.
- Violations related to international cartels or transnational criminal organizations, including money laundering, narcotics, and Controlled Substance Act violations.

Concurrently with its Updated Guidance, the DOJ issued a memorandum entitled "Focus, Fairness,

and Efficiency in the Fight Against White-Collar Crime." This memo clearly lays out the priorities of the DOJ's Criminal Division under the Trump administration, including but not limited to "trade and customs fraud," "conduct that threatens the country's national security," and combatting "foreign terrorist organizations" such as "recently designated Cartels and [Transnational Criminal Organizations]." The DOJ stated that amendments to the Pilot Program were intended to "demonstrate the Division's focus on these priority areas." The changes in the Updated Guidance closely track the stated priority areas, and they reflect that while the Pilot Program will continue, its focus may shift to reflect the additional goals of the Trump administration.

Recommendations for Minimizing Risk Under the Pilot Program

While the recent changes to the Pilot Program broaden the scope of potential whistleblower reports and may implicate companies in industries that were previously not likely to be subject to the program, the substantive best practices for minimizing risk of a whistleblower seeking to take advantage of the Pilot Program remain the same, even with the Updated Guidance. Companies therefore should take this opportunity to review and update their whistleblower response policies to ensure they are clear, being followed, and effective.

- **Have a preexisting compliance program that encompasses all relevant subject-matter areas.** Given the 120-day window to self-disclose under the Pilot Program, companies must be able to undertake complete internal investigations on a short timeline. Companies should ensure they have strong and robust internal reporting structures for misconduct of any type and that they are prepared to promptly investigate any alleged misconduct. Companies should protect the confidentiality of whistleblowers, not retaliate, and not impede whistleblowers from reporting potential violations to the government. To the extent that a company's compliance program defines potential "misconduct" more narrowly than the Pilot Program, those companies should consider expanding the scope of their compliance function to ensure all potential violations of criminal law are thoroughly investigated.
- **Conduct internal investigations under privilege.** The Pilot Program provides that information is not "original" if the whistleblower obtained it through a communication subject to the attorney-client privilege. It also disqualifies potential whistleblowers if they learned the information in connection with the company's process for identifying, reporting, and addressing potential violations of law. Therefore, it is essential for companies to preserve privilege while conducting internal investigations. In-house or outside counsel should guide the investigation, and the scope and purpose of the investigation should be documented in writing. Companies should be careful with the extent to which they involve non-attorneys in the investigation (if at all) and should ensure the investigation is being led by attorneys and for the purpose of obtaining attorney advice.
- **Consider self-disclosure where appropriate.** If a company chooses to self-disclose potential misconduct within the 120-day period provided by the Pilot Program, the company is entitled to a presumption of declination under the Self-Disclosure Policy. Where there is any question regarding whether a company has uncovered "misconduct," this presumption may put a thumb on the scale for self-disclosing, although note that the program also requires companies to cooperate throughout the ensuing government investigation.
- **Be aware of pre-existing self-disclosure requirements.** In combatting the eligibility of potential whistleblowers, companies should consider whether they have any existing requirement to self-disclose. This may come from requirements imposed on all federal grant recipients. It could stem from serving as a government contractor, where such contractors are already required to disclose evidence of potential violations of federal criminal law. The obligation to self-disclose may also come from a corporate integrity agreement in place

following a prior FCA settlement. If any of these scenarios apply, it is less likely that a potential whistleblower will be deemed to have come forward voluntarily with original information, and there may be an argument that they therefore do not qualify for an award under the Pilot Program.

Lori Rubin Garber also contributed to this article.

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