

SDNY WHISTLEBLOWER PILOT PROGRAM¹

To encourage early voluntary self-disclosure of criminal conduct and to promote effective enforcement of criminal laws, the United States Attorney's Office will implement a pilot program applicable to circumstances where an individual discloses to this Office information regarding criminal conduct undertaken by or through public or private companies, exchanges, financial institutions, investment advisers, or investment funds involving fraud or corporate control failures or affecting market integrity, or criminal conduct involving state or local bribery or fraud relating to federal, state, or local funds.² Specifically, in such circumstances, this Office will enter into a non-prosecution agreement in exchange for the individual's cooperation where the following conditions are met:

1. The misconduct has not previously been made public and is not already known to the United States Attorney's Office;
2. The individual discloses the criminal conduct voluntarily and not in response to a government inquiry or obligation to report misconduct;
3. The individual is able to provide substantial assistance in the investigation and prosecution of one or more equally or more culpable persons, and is prepared to cooperate fully with this Office in its investigation and prosecution of the disclosed conduct;
4. The individual truthfully and completely discloses all criminal conduct in which the individual has participated and of which the individual is aware;
5. The individual is not (a) a federal, state, or local elected or appointed and confirmed official; (b) an official or agent of a federal investigative or federal law enforcement agency; (c) a person who otherwise is, or is expected to become, of major public interest; or (d) the chief executive officer or equivalent or chief financial officer or equivalent of a public or private company; and
6. The individual has not engaged in any criminal conduct that involves the use of force or violence, any sex offense involving fraud, force, or coercion or a minor, or any offense involving terrorism or implicating national security and does not have a

¹ The contents of this memorandum provide internal guidance to SDNY prosecutors on legal issues. Nothing in this policy is intended to create any substantive or procedural rights, privileges, or benefits enforceable in any administrative, civil, or criminal matter by prospective or actual witnesses or parties. Moreover, it remains at all times in the sole discretion of the United States Attorney's Office to determine whether an individual has satisfied each of the conditions necessary for the Office to enter into a non-prosecution agreement in exchange for the individual's cooperation, and, where the Office has determined that any of those conditions are not met, it remains at all times in the sole discretion of the Office to determine whether to extend a non-prosecution agreement in exchange for the individual's cooperation. This policy does not apply to any other United States Attorney's Office or any other litigating component of the Justice Department. Finally, this policy does not supersede any provision of the Justice Manual.

² This policy does not apply to individuals who provide information regarding violations of the Foreign Corrupt Practices Act, or violations of federal or state campaign financing laws, federal patronage crimes, or corruption of the electoral process, or bribery of federal officials.

previous felony conviction or a conviction of any kind for conduct involving fraud or dishonesty.

Where an individual discloses information to this Office regarding criminal conduct undertaken by or through public or private companies, exchanges, financial institutions, investment advisers, or investment funds involving fraud or corporate control failures or affecting market integrity or criminal conduct concerning federal, state, or local bribery or fraud relating to federal, state, or local funds, but does not meet the requirements set forth above, prosecutors may nonetheless consider, with supervisory approval and consistent with the principles set forth in the Justice Manual, exercising discretion to extend a non-prosecution agreement in exchange for the individual's cooperation. In evaluating whether such an agreement would be in the public interest and necessary in the particular case, prosecutors and supervisors should consider, among other things, the following factors:

1. Whether and to what extent the criminal conduct had previously been made public or was previously known to this Office;
2. Whether the individual disclosed the criminal conduct voluntarily or in response to government inquiry or reporting obligation;
3. The extent to which the individual is able to provide substantial assistance in the investigation and prosecution of one or more equally or more culpable persons and the individual's culpability relative to others;
4. Whether the individual has truthfully and completely disclosed all criminal conduct in which the individual has participated and of which the individual is aware;
5. The extent to which the individual occupies any official or leadership position or other position of public or private trust;
6. The adequacy of non-criminal sanctions, including but not limited to remedies imposed by civil regulators; and
7. The individual's criminal history.

Contact Information

To self-disclose pursuant to this policy, please email: USANYS.WBP@usdoj.gov