

# US Attorney for SDNY launches whistleblower program to encourage self-disclosure by individuals

By Maria Cruz Melendez, Esq., Alessio D. Evangelista, Esq., Andrew M. Good and Christopher J. Gunther, Esq., Skadden, Arps, Slate, Meagher & Flom LLP\*

JANUARY 25, 2024

On January 10, 2024, Damian Williams, U.S. Attorney for the Southern District of New York (SDNY), announced the creation of that office's Whistleblower Pilot Program (Program).<sup>1</sup> This initiative provides notice of the requirements for individuals who wish to self-disclose criminal conduct and cooperate with the government in exchange for a non-prosecution agreement.

---

## *The Program does not offer financial incentives for reporting misconduct.*

---

The announcement comes amid a broader effort by the Department of Justice to motivate the self-disclosure of criminal conduct, particularly in corporate settings. By clarifying the criteria and requirements for individuals seeking non-prosecution agreements, SDNY seeks to encourage "early and voluntary self-disclosure of criminal conduct by individual participants in certain non-violent offenses."

Unlike whistleblower programs run by agencies like the Securities and Exchange Commission, Commodity Futures Trading Commission and the Financial Crimes Enforcement Network of the Department of the Treasury, the Program does not offer financial incentives for reporting misconduct. Rather, the incentive provided by the Program is the chance to avoid prosecution.

The Whistleblower Pilot Program applies to two sets of offenses:<sup>2</sup>

- Cases of criminal conduct by or through public or private companies, exchanges, financial institutions, investment advisers or investment funds involving fraud, corporate control failures or other acts affecting market integrity.
- Cases involving state and local bribery or fraud involving federal, state or local funds.

The program is inapplicable to Foreign Corrupt Practices Act violations, violations of federal or state campaign finance laws, federal patronage crimes, corruption of the electoral process or bribery of federal officials.

Several conditions must be met for a person to obtain a non-prosecution agreement under the Program. The misconduct being

reported must be nonpublic and not already known to SDNY. Disclosure must be voluntary and not in response to a government inquiry or obligation to report misconduct.

In addition, individuals participating in the Program must truthfully and fully disclose all the criminal conduct they have participated in and are aware of (*i.e.*, not limited to the conduct that prompted their self-disclosure). They must also cooperate fully and provide substantial assistance in the investigation or prosecution of one or more "equally culpable" people.

Two classes of individuals are excluded from the Program:

- Federal, state or local elected, or appointed and confirmed officials; agents and officials of federal law enforcement and investigative agencies; CEOs and CFOs of public or private companies; and people who are or are expected to become "of major public interest."
- Individuals who engaged in crimes involving violence, sex offenses, or terrorism and national security as well as people with prior felony convictions for fraud or dishonesty.

---

## *Disclosure must be voluntary and not in response to a government inquiry or obligation to report misconduct.*

---

Cooperating individuals who are ineligible may still enter into a non-prosecution agreement at prosecutors' discretion based on the principles set out in the DOJ's Justice Manual. In deciding whether to exercise that discretion, the Justice Manual instructs prosecutors to consider factors that are similar to those outlined in the Program, as well as the degree to which the individual occupies a leadership position or position of trust, the adequacy of non-criminal sanctions and the individual's criminal history.

In February 2023, the DOJ adopted new national standards for voluntary self-disclosure credit in corporate criminal enforcement actions and, in October 2023, Deputy Attorney General Lisa Monaco announced a new safe harbor policy for misconduct discovered during the merger and acquisition process. See our March 3, 2023,

alert “DOJ Implements Voluntary Self-Disclosure Policy for US Attorneys’ Offices”<sup>3</sup> and our October 5, 2023, alert “DOJ Announces Safe Harbor Policy for Voluntary Self-Disclosures Related to Mergers & Acquisitions.”<sup>4</sup>

The Program, now in a pilot phase, represents another effort by a DOJ component to encourage self-disclosure.

## Notes

<sup>1</sup> <https://bit.ly/3Sty3Cg>

<sup>2</sup> <https://bit.ly/4975jEN>

<sup>3</sup> <https://bit.ly/3vLFS26>

<sup>4</sup> <https://bit.ly/42iRtx2>

## About the authors



(L-R) **Maria Cruz Melendez** is a partner in **Skadden Arps, Slate, Meagher & Flom LLP**'s white collar defense and investigations practice, where she represents corporations and individuals in criminal and civil matters brought by federal and state authorities. She is based in New York and can be reached at [maria.cruzmelendez@skadden.com](mailto:maria.cruzmelendez@skadden.com).

**Alessio D. Evangelista** is also a partner in the firm's white collar defense and investigations practice, where he advises global finance institutions and multinational corporations on compliance and enforcement matters. He is based in Washington, D.C., and can be reached at [Alessio.evangelista@skadden.com](mailto:Alessio.evangelista@skadden.com). **Andrew M. Good**, also a partner in the firm's white collar defense and investigations practice, represents corporations and individuals in U.S. and cross-border criminal and regulatory investigations. He is based in London and can be reached at [Andrew.good@skadden.com](mailto:Andrew.good@skadden.com). **Christopher J. Gunther**, also a partner in the firm's white collar defense and investigations practice, represents corporations and individuals in white collar criminal matters and civil government enforcement cases. He is based in New York and can be reached at [Christopher.gunther@skadden.com](mailto:Christopher.gunther@skadden.com). The authors would like to thank partners Steven R. Glaser and Ryan D. Junck and associate Samuel G. Bieler for their contributions to this article, which was originally published Jan. 17, 2024, on the firm's website. Republished with permission.

This article was published on Westlaw Today on January 25, 2024.

\* © 2024 Maria Cruz Melendez, Esq., Alessio D. Evangelista, Esq., Andrew M. Good and Christopher J. Gunther, Esq., Skadden, Arps, Slate, Meagher & Flom LLP

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered, however it may not necessarily have been prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional. For subscription information, please visit [legalsolutions.thomsonreuters.com](https://legalsolutions.thomsonreuters.com).