

White Collar Defense and Investigations



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DOJ Pilot Program Promises Non-Prosecution Agreements to Individuals Reporting Fraud, Bribery and Other Corporate Crimes

On April 15, 2024, the Department of Justice's (DOJ's) Criminal Division unveiled a new Pilot Program on Voluntary Self-Disclosures for Individuals that offers non-prosecution agreements (NPAs) to individuals who voluntarily disclose "original information" about certain types of crimes and who meet certain criteria.

By incentivizing individuals in this way, the program also intends to encourage companies to implement compliance programs that will enable them to prevent, detect, remediate and report misconduct. In practice, the pilot program — if successful — is likely to become another consideration for companies when deciding whether and when to self-disclose potential misconduct.

Offenses Covered

The pilot program applies to a set of crimes involving corporations, mostly focusing on financial institutions and large companies (50 or more employees):

- "Violations by financial institutions, their insiders, or agents, including schemes involving money laundering, anti-money laundering, registration of money transmitting businesses, and fraud statutes, and fraud against or compliance with financial institution regulators."
- Offenses related to financial market integrity (a) by financial institutions, investment advisors or investment funds, (b) by or through large companies, or (c) by such entities' insiders or agents.
- Foreign corruption and bribery by, through, or related to companies, including violations of the Foreign Corrupt Practices Act (FCPA), Foreign Extortion Prevention Act or money laundering statutes.
- Bribery or kickbacks to domestic public officials by or through companies.
- Health care fraud or kickbacks committed by or through large companies.
- Fraud or deception by or through large companies against the United States related to federally funded contracting.

Self-Disclosure Requirements

The individual must make a truthful and complete disclosure to the Criminal Division of non-public information that is not previously known to any DOJ component.

- The disclosure must be voluntary, meaning there was (a) no prior government request related to the subject matter, (b) no preexisting disclosure obligation to any federal agency, and (c) no government investigation or threat of imminent disclosure.

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- The individual must cooperate fully and provide substantial assistance.
- The individual must also agree to forfeit and disgorge any profit from wrongdoing and to pay restitution or victim compensation.

Who Is Ineligible

CEOs and CFOs, domestic government officials and law enforcement employees, and foreign government officials are ineligible. Individuals are also ineligible if they were the scheme's organizer/leader, have a previous felony conviction or a conviction involving fraud or dishonesty, or engaged in criminal conduct involving violence, force, threats, substantial patient harm, any sex offense involving fraud, force or relating to a minor, or any offense involving terrorism.

Key Points

This pilot program, which resembles the Antitrust Division's long-standing [Individual Leniency Policy for antitrust crimes](#), reflects another step in the DOJ's effort to incentivize voluntary self-disclosure and robust compliance programs.

Among other actions, the DOJ announced that it will launch a new whistleblower monetary reward program in the coming months, and it recently said it would provide a safe harbor for wrongdoing unearthed during M&A activity under certain circumstances. See our March 11, 2024, client alert "[DOJ Announces Plan To Offer Monetary Rewards for Whistleblowers](#)" and our December 13, 2023, client alert "[DOJ Leverages the Private Sector To Achieve Enforcement Goals](#)."

As a further extension of these efforts, U.S. Attorney's Offices in the Southern District of New York and Northern District of California recently implemented pilot programs that offer NPAs to eligible whistleblowers for certain offenses (excluding, for example, FCPA violations).

The potential to obtain an NPA may incentivize some whistleblowers to skip internal company reporting and go directly to the DOJ. Companies can best position themselves by implementing policies and procedures that encourage internal reporting of potential misconduct, and provide for prompt determinations as to whether the company should self-disclose the conduct to the relevant authorities. The risk that a whistleblower will beat a company to the DOJ's door is now higher and should appropriately be factored into any decisions relating to self-disclosure.

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