

Publications

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Ready for Takeoff - DOJ's Criminal Division Corporate Whistleblower Awards Pilot Program Launched

On August 1, 2024, the Criminal Division of the Department of Justice ("DOJ") launched its anticipated nationwide Corporate Whistleblower Awards Pilot Program ("Pilot Program"), promising potential monetary awards to individual whistleblowers who provide original and truthful information that results in successful forfeiture. The Pilot Program, which will run for three years, was originally announced by Deputy Attorney General Lisa Monaco at the American Bar Association's 39th National Institute on White Collar Crime in March. The program will run alongside the DOJ's Pilot Program on Voluntary Self-Disclosures for Individuals, which began in April.

The program is modeled after whistleblower programs run by the SEC, CFTC and FinCEN and seeks original information about corporate misconduct not covered by those programs. The focus is on crimes involving financial institutions and their employees, foreign corruption involving privately held companies and others that are not issuers of U.S. securities, domestic corruption involving misconduct by companies or health care fraud schemes involving private insurance plans. To receive an award under the program, the whistleblower must:

- Be an individual and ineligible for award under a different U.S. government or statutory whistleblower program;
- Provide truthful and complete information, including any details about their own role in the misconduct;
- Not have meaningfully participated in the criminal activity they are reporting;
- Not be an official, employee, or contractor for the DOJ or be the spouse, parent, child or sibling of an official, employee or contractor for the DOJ at the time the original information was acquired;
- Fully cooperate with the DOJ's investigation of the related conduct in both criminal and civil actions, which includes providing testimony when needed; and
- Lead to a successful forfeiture exceeding \$1 million in net proceeds to the DOJ in connection with prosecution, criminal resolution or civil forfeiture related to the criminal conduct.

Should a whistleblower meet all the requirements, they may be eligible for a discretionary

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award drawn from the net proceeds of the forfeiture. The DOJ is taking a percentage approach, basing calculations on the following:

- An award of up to 30% of the first \$100 million in net proceeds forfeited;
- An award of up to 5% of any net proceeds forfeited between \$100 million and \$500 million;
- No award on net proceeds forfeited above \$500 million.

Nevertheless, the DOJ has the discretion to increase or decrease the award based on several factors, including the significance of the information provided, the assistance provided by the whistleblower, the culpability of the whistleblower, unreasonable delay in reporting, interference with internal compliance and reporting systems and whether the whistleblower had a management role or oversight of offices and personnel involved in the misconduct. Regardless of the factors, an award is not guaranteed, and whistleblowers do not have an enforceable right to obtain an award.

Further, if a company voluntarily self-reports within 120 days of receiving an internal whistleblower report, they may be eligible for a presumption of declination under the DOJ's Corporate Enforcement and Voluntary Self-Disclosure Policy so long as the company reports before the DOJ makes contact.

The launch of this Pilot Program and similar initiatives demonstrates the DOJ's continued efforts to incentivize the disclosure of corporate misconduct and focus on prosecuting these types of crimes, which in turn impacts the risk calculation corporations face when deciding whether to self-report either before or after a whistleblower report. As a result, it is crucial that corporations ensure their compliance programs and internal reporting mechanisms maximize the ability to detect, deter and respond to potential misconduct.

Polsinelli's government investigations attorneys have extensive experience with corporate investigations, and government whistleblower programs and are prepared to assist with compliance, internal investigations, or any potential enforcement action.