

# Clients & Friends Memo

## **The Department of Justice Launches a Self-Reporting Pilot Program: Implications Remain Unclear for Individuals and Companies**

**April 17, 2024**

On April 15, 2024, the Department of Justice (“DOJ”) Criminal Division [announced a pilot program](#) (“Pilot Program”) aimed at encouraging voluntary self-disclosures for individuals who are witnesses to or involved in corporate or financial wrongdoing. The program uses the prospect of discretionary grants of immunity and non-prosecution agreements (“NPAs”) offered in exchange for a person’s cooperation, in order to encourage potentially culpable witnesses to come forward and aid in investigations and prosecutions. While such relief for cooperating witnesses has long been part of the federal criminal system, and addressed in the DOJ’s Justice Manual, this Pilot Program provides greater transparency as to the applicable criteria. To qualify for an NPA under the DOJ Pilot Program, the information must (1) be original, meaning not publicly available or otherwise known to the DOJ; (2) relate to the targeted violations; and (3) be truthful and complete.

In March 2024, Deputy Attorney General (“DAG”) Lisa Monaco announced that the DOJ will create a reward-based whistleblower program to bolster corporate enforcement efforts with financial incentives for whistleblowers who volunteer information. At that time, DAG Monaco and Acting Assistant Attorney General Nicole Argentieri referred to a 90-day policy sprint to develop the whistleblower program, under which an individual who aids the DOJ in discovering “significant corporate or financial misconduct” could qualify to receive a portion of the resulting penalty as an award. Individuals would only be eligible to receive such an award under the anticipated program if they are not involved in the criminal activity itself, among other factors.

Unlike the whistleblower program, the Pilot Program announced this week makes individuals who are involved in corporate or financial wrongdoing – in other words, involved in the criminal activity – eligible. The prospect of immunity or an NPA provides the opportunity for individuals to secure protections in exchange for volunteering actionable, original information about criminal conduct that might otherwise remain undetected or impossible to prove. Any such information must be provided voluntarily and not made pursuant to a government inquiry, preexisting reporting obligation, or “imminent threat of disclosure.” While separate from the DOJ whistleblower rewards program that is being developed, the Pilot Program is very much part of the same policy initiative to encourage

people with knowledge (even participants) to come forward and voluntarily disclose information related to potential corporate and financial crimes.

The Pilot Program will target financial crimes, financial regulatory compliance issues, foreign and domestic bribery, and health care fraud, specifically listing [the following categories of information](#):

- (1) 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;
- (2) violations related to the integrity of financial markets undertaken (i) by financial institutions, investment advisors, or investment funds; (ii) by or through public or private companies with 50 or more employees; or (iii) by any insiders or agents of any such entities;
- (3) violations related to foreign corruption and bribery by, through, or related to public or private companies, including violations of the Foreign Corrupt Practices Act (FCPA), violations of the Foreign Extortion Prevention Act (FEPA), and violations of money-laundering statutes;
- (4) violations related to health care fraud or illegal health care kickbacks committed by or through public or private companies with 50 or more employees;
- (5) violations by or through public or private companies with 50 or more employees related to fraud against, or the deception of, the government in relation to federally funded contracting, where such fraud does not involve health care or illegal health care kickbacks; and
- (6) violations committed by or through public or private companies related to the payment of bribes to domestic public officials.

The United States Attorney's Office for the Southern District of New York (SDNY) announced a similar pilot program [in January](#).

#### **Practice Points**

- The Pilot Program incentivizes companies to create or improve compliance programs that encourage robust internal reporting of complaints that help prevent, detect, and remediate misconduct before it begins or expands, and that allows companies to promptly report any such misconduct.

- Companies should—independent of any governmental guidance—continuously update their compliance programs in order to identify misconduct as soon as possible. It is, of course, to every company's advantage to identify issues internally before they are raised externally.
- As we have previously [advised](#), an NPA is often considered a favorable resolution. It remains to be seen whether individuals will **voluntarily** self-report their own misconduct. Furthermore, an individual's ability to satisfy the conditions promulgated in the program are unknowable *ex ante*, and prosecutors retain discretion to determine whether any given set of conditions has been fulfilled.

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