

Clients & Friends Memo

Department of Justice Announces New Whistleblower Rewards Program

March 11, 2024

On March 7, 2024, the U.S. Department of Justice (“DOJ”) announced that it will create a whistleblower rewards program under which individuals who report corporate misconduct can earn a share of any resulting DOJ forfeiture. The details of the program have yet to be announced—the DOJ announced a “90-day sprint to develop and implement a pilot program with a formal start date later this year,” but the broad strokes of the program are clear. To qualify for a reward from the DOJ, an individual who was not involved in the criminal activity must provide truthful, non-public information not already known to the government. DOJ rewards will be paid only when the matter is outside the scope of existing financial disclosure incentive programs, such as other federal whistleblower programs and the federal qui tam statutes, and only after all victims have been properly compensated.

The DOJ’s whistleblower program will supplement and fill in gaps that exist in current whistleblower programs operated by the U.S. Securities and Exchange Commission (“SEC”), Commodities Futures Trading Commission (“CFTC”), and Financial Crimes Enforcement Network (“FinCEN”). These programs have proved hugely successful, at least from the government’s perspective—in 2023 the SEC whistleblower program received more than 18,000 tips and paid out \$600 million in rewards to whistleblowers—but they are limited to misconduct that falls within each of the agencies’ jurisdiction. The DOJ whistleblower program will be broader, covering the full range of corporate and financial misconduct that the DOJ prosecutes. The DOJ cited as examples of the types of matters it is especially interested in—criminal abuses of the U.S. financial system, FCPA cases that are outside the SEC’s jurisdiction and violations of the recently enacted Foreign Extortion Prevention Act, and domestic corruption cases.

The DOJ’s whistleblower program is the most recent in a series of efforts to incentivize both individuals and corporations to voluntarily disclose criminal wrongdoing to the government. Under the DOJ Criminal Division’s Corporate Enforcement and Voluntary Self-Disclosure Policy, a corporation that voluntarily discloses criminal misconduct, fully cooperates with the government, and timely and appropriately remediates can qualify for a declination or reduced penalties. Under pilot programs recently announced by the U.S. Attorneys Offices in the Southern District of New York and the Northern District of California, individual wrongdoers who voluntarily disclose their

misconduct and cooperate in the prosecution of other, more culpable participants can qualify for a non-prosecution agreement. Whether for innocent whistleblowers seeking monetary rewards, culpable individuals seeking a non-prosecution agreement, or companies seeking a declination, the DOJ's intended message is clear: those who are "first in the door" can qualify for favorable treatment.

For companies, the announcement of yet another, broader whistleblower rewards program underscores the need to ensure that their internal reporting hotlines and internal investigations processes are well publicized internally and trusted by employees. By encouraging internal reporting by employees, companies can more quickly identify and remediate potential wrongdoing or compliance gaps, foster a culture of compliance and build employee trust in the compliance program, and minimize the likelihood that employees will feel the need or desire to report potential misconduct externally. In our experience, most employees who report misconduct are motivated primarily by a desire to see the company conduct its business in a legal and ethical manner. Promoting internal reporting mechanisms, conducting prompt, thorough internal investigations, and taking appropriate remedial actions where warranted can help companies minimize the risk of potential government whistleblower complaints.

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If you have any questions, please feel free to contact any of the following Cadwalader attorneys.

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