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A New 'Carrot' in the Government's Pocket: DOJ Announces Pilot Program to Reward Whistleblowers

March 11, 2024

The Department of Justice (DOJ) is continuing its efforts to crack down on corporate misconduct by developing a new program to pay corporate whistleblowers for information leading to civil and criminal forfeitures. This program will likely have significant implications for corporations and their executives.

The program was announced in remarks delivered on March 7 and 8 by Deputy Attorney General Lisa Monaco and Acting Assistant Attorney General Nicole M. Argentieri, respectively. As explained by Monaco, the premise of the new program "is simple: if an individual helps DOJ discover significant corporate or financial misconduct—otherwise unknown to [the Department], then the individual could qualify to receive a portion of the resulting forfeiture." The pilot program, which the DOJ aims to implement as early as June, coupled with other recent DOJ voluntary self-disclosure (VSD) initiatives, creates a strong incentive for companies and individuals to report violations promptly and to invest in a culture of compliance.

According to Deputy Monaco, the purpose of the program is to address the full range of corporate misconduct that might otherwise fall outside the ambit of existing federal whistleblower programs, including those administered by the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), and the Financial Crimes Enforcement Network (FinCEN). Although she described those other programs as "indispensable," Monaco explained that they are necessarily limited in scope by the respective jurisdictions of their administering agencies. For instance, the SEC's existing program is limited to public companies or advisors that fall within the agency's purview—the SEC does not have jurisdiction to take action on information outside the scope of federal securities law, such as against private companies.

The new DOJ pilot program, in contrast, will significantly broaden the types of conduct for which whistleblowers could qualify for awards. For instance, during Deputy Monaco's and AAG Argentieri's respective addresses, they emphasized that the DOJ is hoping to encourage whistleblowers to report (1) criminal abuses of the US financial system; (2) foreign corruption cases outside the SEC's jurisdiction, including FCPA violations by non-issuers and violations of the recent Foreign Extortion Prevention Act; and (3) domestic corruption cases, including illegal payments to government officials.

The agency is engaged in a 90-day "policy sprint" to gather information and engage with stakeholders about the program, after which a formal policy is expected to be implemented. As the basis of the program is tied to the Attorney General's statutory authority to pay awards for "information leading to civil or criminal forfeitures," the DOJ's Money Laundering and Asset Recovery Section (MLARS) is taking the lead in developing the program.

Although the design of the pilot program is in its early stages, the DOJ appears to envision at least four "guardrails" for the program. The DOJ will only offer payments:

1. After all victims have been properly compensated;
2. Only to individuals who provide information voluntarily and not in response to a government inquiry, a preexisting reporting obligation, or an imminent threat of disclosure;
3. Only to individuals who are not otherwise involved in the reported misconduct; and
4. Only to individuals who submit original, non-public, truthful information not already known to the DOJ.

There also will be a "monetary threshold" for the program, allowing the DOJ to focus its resources on the "most significant cases." The exact level of that threshold has not been decided, but AAG Argentieri specifically referenced that the SEC and CFTC's programs limit rewards to cases in which the agency orders sanctions of $1 million or more.

Key Takeaways

It is difficult to overstate the potential consequences of this new program. Whistleblowers who work for non-public companies and non-issuers outside the purview of the SEC will now have a strong incentive to report corporate misconduct, putting those corporations and their executives at much greater risk of government scrutiny and, potentially, criminal charges.

Even more significantly, individuals who before now might have been only witnesses in a criminal case will now have a direct financial interest in the outcome of the case. Potential whistleblowers could stand to profit if they run to the government and the company is ultimately forced to forfeit substantial assets.

The health care industry could also feel significant repercussions from the new whistleblower incentive. *Qui tam* relators have been limited thus far in bringing complaints for fraud against federal health care programs, such as Medicare, Medicaid, or Tricare. Under the new pilot program, however, whistleblowers could potentially collect awards based on recoveries from commercial insurance fraud as well. With several laws already potentially criminalizing fraud relating to commercial health care insurance, the new program may become a potent tool for the DOJ's aggressive health care fraud prosecutors.

Nevertheless, the message from the DOJ was clear: companies should "knock on our door before we knock on yours."

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03/11/24