

LEGAL UPDATES

PUBLISHED: AUGUST 8, 2024

Service

White Collar, Internal
Investigations, &
Compliance

Professional

PETER A. STRICKLAND
KANSAS CITY:
816.983.8213
PETER.STRICKLAND@
HUSCHBLACKWELL.COM

DOJ Provides More Detail on New Whistleblower Pilot Program

On August 1, 2024, the Department of Justice (DOJ) released a 14-page memorandum outlining the Corporate Whistleblower Awards Pilot Program announced earlier this year. Deputy Attorney General Lisa Monaco explained in her keynote address to the American Bar Association’s 39th National Institute on White Collar Crime that whistleblowers could be entitled to an award for sharing new information about corporate misconduct, and she set the stage for a “90-day sprint” to develop and implement the program.

At the time, many commentators and white collar law professionals—including our own Justice Insiders podcast—noted that the limited details of the Monaco announcement in March left many important questions unanswered, including those regarding the anonymity of whistleblowers, the complications of multiple competing whistleblower programs, and the complexities of handling information in parallel proceedings. Despite DOJ’s publication of the August memorandum, many of these concerns remain.

DOJ began the program purportedly to augment other whistleblower programs like False Claims Act qui tam actions. Specifically, according to the memorandum issued by the Department, “[w]histleblowers may be eligible for an award pursuant to the Corporate Whistleblower Awards Pilot Program when they provide original, truthful information about criminal misconduct relating to one or more designated program areas that leads to forfeiture exceeding \$1,000,000 in net proceeds.”

The memorandum further outlines parameters to the program that affect a whistleblower’s eligibility. Whistleblowers are only eligible for award if they are individuals. No companies or other entities are eligible. The individual must offer original information. The Department defines original information as “derived from the individual’s independent knowledge or independent analysis.” The disclosure cannot be founded in publicly available information

and cannot be already known by the Department. Additionally, the disclosure must be voluntary and not based in a request from the Department. Finally, the whistleblower's information must be truthful, complete, and they must cooperate with the Department's investigation.

There are only four subject areas applicable to the program:

1. Financial institutions involving money laundering, anti-money laundering compliance violations, registration of money transmitting businesses, and fraud statutes, and fraud against or non-compliance with financial institution regulators
2. Violations involving foreign corruption and bribery
3. Domestic bribes and kickbacks to public officials
4. Healthcare fraud involving private insurers

If there is a final order of forfeiture of more than \$1,000,000, the eligible whistleblower may receive compensation. The Department will evaluate the significance of the disclosure, the level of cooperation with the Department's investigation, and whether the whistleblower participated in the company's compliance program to determine the appropriate amount of award. The individual may not be eligible if they were in management or participated in the misconduct.

What this means to you

The incentives created by DOJ's new Corporate Whistleblower Awards Pilot Program sit awkwardly beside the Department's prior efforts to encourage corporate compliance teams to develop in-house mechanisms for self-reporting. Compliance programs will need to carefully evaluate the outlines of the new program and continue to invest in processes and procedures that allow for timely and meaningful intake of employee concerns regarding potentially illegal corporate conduct.

Contact us

If you have questions or concerns regarding DOJ's new Corporate Whistleblower Awards Pilot Program, contact a member of Husch Blackwell's White Collar, Internal Investigations, & Compliance team or your Husch Blackwell attorney.