



The DOJ's Expanded Voluntary Self Disclosure Pilot Program

Just six weeks after Deputy Assistant Attorney General (DAG) Lisa Monaco [announced a whistleblower program](#) at the American Bar Association's 39th National Institute on White Collar Crime in San Francisco, the Department of Justice (DOJ) has expanded those potentially protected through their creation of a new Pilot Program on Voluntary Self-Disclosure for Individuals.¹

This expanded Pilot Program piggybacks on the DOJ's previously announced whistleblower program but fills a gap for those previously left unprotected: whistleblowers involved in the criminal activity. Under the previous rules, announced by DAG Monaco in March, whistleblowers who voluntarily disclosed criminal activity could be eligible for financial compensation, as long as they were not involved in the criminal conduct.

Now, pursuant to the DOJ's new Pilot Program, participants complicit in the criminal conduct could nonetheless be eligible for their own benefit: a non-prosecution agreement (NPA).²

"The prospect of an NPA may provide a strong incentive for individuals to bring to the Criminal Division's and law enforcement's attention actionable, original information about criminal conduct that might otherwise go undetected or be impossible to prove."

Eligibility for Pilot Program

In order to be eligible for the Pilot Program's benefits, individuals must "voluntarily self-disclose[] original information about criminal misconduct," – including their own

role in the misconduct – fully cooperate, and provide information that is:

1. **Sent** to the Criminal Division at NPA.Pilot@usdoj.gov.
1. **Original** – meaning non-public information not previously known to the Criminal Division and that relates to a certain area of criminal conduct (a list of eligible conduct areas is below).
2. **Voluntary** – meaning it occurs before any DOJ (or government) inquiry into the information, by an individual who has no preexisting obligations to disclose the information in connection with civil or criminal actions, and without any ongoing government investigation (or threat of immediate government or public disclosure).
3. **Truthful and complete** – meaning it includes all information known to the whistleblower relating to any misconduct said person has participated and/or of which they are aware.

Additionally, and as mentioned above, the whistleblowers themselves must:

1. **Fully cooperate** – meaning the whistleblower must agree to “fully cooperate with and be willing to provide substantial assistance” to the DOJ regarding their investigation of related conduct and the prosecution of equally or more culpable individuals. This includes truthfully participating in interviews, providing testimony, producing documents, and, if requested, assisting the DOJ by working in a proactive manner for the investigation.
2. **Forfeit profit** – meaning the whistleblower must agree to forfeit any profit they received from the criminal conduct and pay any applicable restitution or victim compensation.
3. **Be someone who:**
 1. Has not engaged in criminal conduct involving violence, use of force, threats, or substantial patient harm, any sex offenses involving fraud, force, or coercion, or relating to a minor, or any offense involving terrorism;
 2. Is not the CEO or CFO of a public or private company, or is not the organizer/leader of the scheme;
 3. Is not an elected or appointed foreign government official;
 4. Is not a domestic government official at any level; and

5. Does not have a previous felony conviction – or a conviction for conduct involving dishonesty (including fraud).

The Pilot Program Only Applies to Certain Criminal Conduct

The DOJ's Pilot Program cannot provide NPAs for all criminal conduct despite meeting the above eligibility criteria. For example, NPAs will not be provided for offenses for which "other components of the DOJ have charging approval authority, such as tax or sanctions offenses, without coordinating with and receiving required approval from the responsible component on the relevant charges." Instead, the information disclosed by any whistleblower seeking protection from this Pilot Program must relate to at least one of the following:

1. Violations by financial institutions involving money laundering or fraud against financial institution regulators;
2. Violations related to the integrity of financial markets undertaken:
 1. By financial institutions, investment advisors, or investment funds,
 2. By or through public companies or private companies with fifty or more employees, or
 3. By any insiders or agents of any such entities;
3. Violations related to foreign corruption and bribery;
4. Violations related to healthcare fraud or illegal healthcare kickbacks;
5. Violations related to fraud against the United States in connection with federally funded contracting other than healthcare fraud or illegal healthcare kickbacks;
or
6. Violations related to the payment of bribes or kickbacks to domestic public officials.

Takeaways

The DOJ's new and now expanded Pilot Program is consistent with its recent focus for the white-collar realm: incentivizing voluntary self-disclosures and encouraging the installation of corporate compliance programs. According to the DOJ, this Pilot Program should function as "a particularly important incentive for companies to create compliance programs that encourage robust internal reporting of

complaints, that help prevent, detect, and remediate misconduct before it begins or expands, and that allow companies to report misconduct when it occurs.”

As the DOJ takes a more “hands on” approach to monetarily or legally incentivizing whistleblowers, companies are encouraged to reassess their internal whistleblower policies and associated guidance. Companies may also want to reevaluate their internal reporting policies regarding any potential violations, and early evaluation of such reports, so as to be better postured to determine if and when to file a voluntary self-disclosure consistent with the Pilot Program.

This client alert was drafted by [Patrick McInerney](#) and [Sarah Kanoy Hobbs](#), attorneys in the Spencer Fane Kansas City, Missouri office. For more information, please visit www.spencerfane.com.

1
All quotations found within this memorandum are from the DOJ’s [press release](#) regarding this new Pilot Program.

2
A NPA is a voluntary agreement entered into between a government agency and a corporation or individual facing a criminal or civil investigation. A NPA typically shields recipients from conviction and punishment.