

DOJ's Criminal Division Launches New Self-Disclosure Pilot Program for Individuals

by Nicole Engisch, Seth Goertz, and Ashley Repp

New DOJ Policy

On April 15, 2024, the U.S. Department of Justice (DOJ)'s Criminal Division announced a new pilot program that will allow and encourage individuals involved in specific types of corporate criminal conduct to voluntarily disclose that misconduct to DOJ in exchange for a non-prosecution agreement.[1] The pilot program complements DOJ's existing corporate self-disclosure policy as well as its recently announced whistleblower program[2] and aims to incentivize individuals to self-disclose their involvement in criminal conduct so DOJ can leverage that information to root out criminal conduct that might otherwise go undetected.[3] However, not everyone with something to disclose will be eligible to take advantage of the pilot program's promises.

Eligibility Requirements

In order for a voluntarily self-disclosing individual to receive a non-prosecution agreement, the individual's disclosure must meet the following requirements:[4]

1. The disclosure must be made by email to DOJ's Criminal Division at NPA.Pilot@usdoj.gov
2. The disclosure must be non-public information about which DOJ does not already know and must pertain to certain qualifying illegal acts, frauds, schemes, and violations outlined by the policy, to include financial institution-related or financial market-related crimes (e.g., bank fraud, money laundering, and insider trading); foreign and domestic corruption and bribery; health care fraud; and federal contracting fraud;
3. The disclosure must be voluntarily made;
4. The disclosure must be truthful and complete, including disclosure of the individual's own involvement in the criminal conduct;
5. The individual must agree to fully cooperate and provide substantial assistance in any DOJ investigation and prosecution related to the disclosure;
6. The individual must pay restitution or otherwise forfeit any profit obtained as a result of the criminal conduct; and

Related People

- Nicole Engisch
- Seth Goertz
- Ashley Repp

Related Capabilities

- Government Enforcement & Corporate Investigations
- Anti-Corruption
- Government Contracts Counseling & Litigation

7. The individual must not have engaged in specific types of illegal conduct including, among other things, violence, sexual offenses, terrorism; is not the Chief Executive or Financial Officer or leader of the illegal act(s); is not an elected or appointed foreign government official; is not a domestic government official; and has no felony criminal record or criminal record involving crimes of fraud or dishonesty.

Even if an individual is otherwise disqualified from receiving a non-prosecution agreement under this pilot program, however, the prosecutor has the discretion to offer such an agreement in “appropriate circumstances.”

Similar Self-Disclosure Policies

DOJ is launching this individual pilot program just shortly after announcing a new whistleblower program and after two United States Attorneys’ Offices announced similar self-disclosure pilot programs aimed at fostering witness cooperation. On February 13, 2024, the United States Attorney’s Office for the Southern District of New York (SDNY) launched a pilot program for individuals with information pertaining to criminal conduct by or through companies, exchanges, financial institutions, investment advisers, investment funds, or specific government related bribery or fraud implicating government related funds.^[5] On March 14, 2024, the United States Attorney’s Office for the Northern District of California (NDCA) announced a nearly identical pilot program to “encourage early voluntary self-disclosure of criminal conduct and to promote effective enforcement of criminal laws”^[6]

DOJ’s new individual pilot program differs from the SDNY and NDCA policies in several key respects. *First*, when an individual self-discloses, but is ineligible for a mandatory non-prosecution agreement, the SDNY and NDCA policies enumerate seven factors for consideration for a discretionary non-prosecution agreement. In contrast, a self-reporting individual who does not qualify for a non-prosecution agreement under DOJ’s Criminal Division new pilot program may still be offered a non-prosecution agreement in “appropriate circumstances,” without specifying the particular factors for consideration. As a result, DOJ’s Criminal Division pilot program contains some ambiguity regarding which circumstances might qualify for a discretionary non-prosecution agreement. *Second*, DOJ’s Criminal Division pilot program includes more eligible offenses than the district level programs, expanding the opportunity for a non-prosecution agreement to individuals involved in federal and foreign bribery, Federal Corrupt Practices Act violations, certain federal fraud, and healthcare fraud. *Third*, in contrast to the SDNY policy’s exclusion of individuals who might fit the ambiguous criteria of being of “major public interest,” DOJ’s Criminal Division pilot program does not explicitly exclude such individuals. *Fourth*, DOJ’s Criminal Division pilot program expressly requires restitution, forfeiture, and disgorgement of profits obtained as a result of the misconduct.

Incentive for Companies

Within the policy announcement, DOJ’s Criminal Division noted that its new individual pilot program “may be 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.”

Final Points and Key Takeaways

While the possibility of immunity from prosecution may come as a relief to individuals looking for an opportunity to extricate themselves from corporate criminal conduct, self-disclosure under the new DOJ Criminal Division pilot program is not without risks. Participation requires full cooperation with DOJ, restitution, forfeiture, and disgorgement of illegally obtained profits, and the painful disclosure of one’s own misconduct. And most importantly, self-disclosure does not guarantee a non-prosecution agreement, which in turn places a tremendous amount of power and discretion in the hands of DOJ’s prosecutors.

- This new individual pilot program, along with DOJ’s new whistleblower program and voluntary self-disclosure policy, continues DOJ’s push to incentivize companies to voluntarily self-report wrongdoing. However, the decision whether and when to do so is a complex one that should be undertaken only after weighing all appropriate risks and benefits.
- Because of the differences in self-disclosure policies between the DOJ’s criminal division and the USAO component offices, such as SDNY and NDCA, individuals must carefully consider *where* to self-disclose. Perhaps inadvertently, DOJ has effectively encouraged forum shopping for would-be whistleblowers. Moreover, because districts such as NDCA and SDNY are presently more “friendly” to whistleblowers, any assessment regarding self-disclosure must consider the appropriate forum and its whistleblower policies.
- Companies should continue to review their compliance programs to ensure they are well designed, adequately resourced, and functioning timely and effectively. This includes adopting effective internal reporting mechanisms, such as compliance hotlines, and ensuring employees are well-trained on how to report potential wrongdoing internally.

[1] The Criminal Division’s Pilot Program on Voluntary Self-Disclosures for Individuals, April 15, 2024 [dl \(justice.gov\)](#)

[2] While DOJ Deputy Attorney General Lisa Monaco announced DOJ’s new whistleblower program in March of this year, the actual program is expected to be implemented sometime within the next few months.

[3] For more information regarding DOJ’s new whistleblower program, see [DOJ to Develop New Whistleblower Program to Augment Existing Federal Whistleblower Programs | News & Resources | Dorsey](#).

[4] The full, detailed list of eligibility requirements can be found in DOJ’s memorandum announcing the new pilot program. [dl \(justice.gov\)](#)

[5] SDNY Whistleblower Pilot Program, February 13, 2024 [sdny_wb_policy_effective_2-13-24.pdf \(justice.gov\)](#)

[6] NDCA Whistleblower Pilot Program, March 14, 2024
[ndca_whistleblower_pilot_program.pdf \(justice.gov\)](#)