

White Collar Criminal Defense

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DOJ Says You Can Put the Fire Out From Inside the House: New Voluntary Self-Disclosure Program Seeks to Root Out Corporate Crime From Within

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Introduction: On April 15, 2024, the Department of Justice's (DOJ) Criminal Division announced a new [Pilot Program on Voluntary Self-Disclosure for Individuals](#). Under this program, individuals who voluntarily disclose certain information to the Criminal Division may receive a non-prosecution agreement (NPA) if they fully cooperate and satisfy other conditions. We summarize the new program and its potential impact on corporate best practices below.

Background: This program is the latest in a series of measures the DOJ has implemented in recent years to encourage proactive, voluntary disclosure of information regarding corporate and other white collar criminal misconduct. The Criminal Division says that the program's purpose is to "provide[] transparency regarding the circumstances in which [its] prosecutors will offer NPAs to individuals who voluntarily disclose original information about certain types of criminal conduct involving corporations," provided that the individual "fully cooperate[s] with authorities[] and pay[s] any applicable victim compensation, restitution, forfeiture, or disgorgement, including returning any ill-gotten gains."

Criteria: The Criminal Division specified a range of criteria – covering both the content of the disclosure and the conduct of the reporting individual – that must be met for the Division to provide an NPA.

Content of the Disclosure

First, the information disclosed must relate to one of the following violations:

- Money laundering, fraud, or other financial crimes by "financial institutions, their insiders, or agents"
- Undermining integrity of the financial markets
- Corruption or bribery, including violations under the Foreign Corrupt Practices Act, the Foreign Extortion Prevention Act, or other money laundering statutes
- Healthcare fraud or kickbacks by public companies or private companies with 50 or more employees
- Fraud related to federally funded contracting by public companies or private companies with 50 or more employees
- Bribes or kickbacks to American public officials by public or private companies

Next, the violations alleged must have been undertaken by or within one of the following (depending on the violation):

- Financial institutions
- Insiders of financial institutions
- Agents of financial institutions
- Investment advisors

- Investment funds
- Public companies
- Private companies (violations other than kickbacks to public officials are limited to private companies with 50 or more employees)

Beyond these threshold criteria, the disclosure must include **original information**, that is, “non-public information not previously known to the Criminal Division or any component of the” DOJ, and must be “truthful and complete,” meaning the disclosure includes all information known to the reporting individual about the misconduct alleged.

Conduct of the Reporting Individual

In addition to meeting the content requirements described above, the reporting individual must satisfy three conduct-related requirements to qualify for an NPA. First, the disclosure must be made **voluntarily**, meaning it is provided (i) before the DOJ has approached the reporting individual or their counsel in connection with any investigation or enforcement action “regarding the same misconduct”; (ii) without the pre-existence of a plea agreement, cooperation agreement, or NPA with the reporting individual; and (iii) before there is public knowledge of “any government investigation” related to the misconduct. Second, the reporting individual must agree to **fully cooperate** with the DOJ and be willing and able to provide substantial assistance. Cooperation may include providing testimony or other evidence “in interviews, before a grand jury[,], or at any trial or other court proceeding”; producing documents; and/or acting as a confidential informant under the supervision of law enforcement. Finally, the reporting individual must agree to **pay back/forfeit** “any profit from the criminal wrongdoing and pay restitution or victim compensation.”

Disqualifying Factors

Even if a reporting individual can satisfy the requirements detailed above, they will not receive an NPA if they:

- Are the CEO or CFO of a public or private company
- Are the “organizer/leader of the scheme”
- Are an elected or appointed official
- Are a U.S. government official at any level, “including any employee of a law enforcement agency”
- Have engaged in a violent crime
- Have engaged in a sex offense “involving fraud, force, or coercion, or relating to a minor”
- Have engaged in terrorism
- Have a previous felony conviction involving fraud or dishonesty

These disqualifiers drive home the DOJ’s focus on holding culpable corporate leaders and public officials accountable for their participation in misconduct.

The Criminal Division’s guidance also includes the caveat that in some circumstances, even if the above conditions are not met, it nevertheless has the discretion to offer a reporting individual an NPA, though not as part of this program.

Conclusion: In its guidance on the new program, the Criminal Division suggests that its use of NPAs in the circumstances described “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.”

A robust compliance program that includes appropriate internal controls and reporting procedures, as well as ongoing employee training on compliance policies and procedures, should be companies' first line of defense in preventing misconduct and, when it does occur, detecting and addressing it before it becomes criminal in nature. Corporate entities that fall within the scope of the program – financial institutions, investment funds and advisors, public companies, and private companies with more than 50 employees – should undertake a fulsome review of their compliance infrastructures.

Contacts

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