

Come See Us Before We Come See You – DOJ Announces New Whistleblower Program Intensifying Corporate Enforcement Efforts

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The Department of Justice is intensifying its corporate enforcement efforts with a new whistleblower program in a way that will likely increase the number of whistleblower complaints DOJ receives. DOJ has made it clear that corporations and individuals with knowledge of corporate misconduct should “come see us before we come see you.” In a March 7, 2024, address to the American Bar Association’s 39th National Institute on White Collar Crime, Deputy Attorney General Lisa Monaco once again delivered a strong message on DOJ’s corporate enforcement policies—DOJ is changing the game with a new whistleblower program and following through on Monaco’s promises of a more aggressive approach to corporate enforcement.^[1]

A GAME-CHANGING WHISTLEBLOWER REWARDS PROGRAM

Monaco’s most critical announcement focused on what some view as a potentially game-changing whistleblower rewards program.

According to Monaco, government whistleblower programs in the past have been something of a “patchwork quilt.” Whistleblower programs at the SEC, CFTC, IRS, and FinCEN are effective, she said, but limited by the jurisdictions of the agencies that employ them. *Qui tam* actions, which are actions brought under the False Claims Act provision that allows individuals to bring claims on behalf of the government, are insufficient to incentivize a whole class of potential whistleblowers because they are only applicable in cases of fraud against the government. And DOJ’s disclosure program to incentivize acquiring companies to uncover misconduct during acquisition due diligence and then report it only applies where the misconduct is discovered through diligence conducted shortly before or after a lawful, bona fide acquisition of a corporate entity and was only recently codified in DOJ’s Justice Manual.^[2]

To fill the gaps, Monaco announced a “90-day sprint” to implement a whistleblower pilot program for individuals who help DOJ “discover significant corporate or financial misconduct, otherwise unknown to us.” The new program would rely on the Attorney General’s statutory authority to pay awards for information or assistance leading to a civil or criminal forfeiture (28 U.S.C. § 524(c)(1)(C)). Whistleblowers meeting the program’s requirements could receive some of the resulting forfeiture.

Although the contours of the program have not been finalized, DOJ has established some basic requirements:^[3]

- the whistleblower must submit original, nonpublic, truthful information not already known to DOJ;

- the information must be provided voluntarily and not in response to any government inquiry, preexisting reporting obligation, or imminent threat of disclosure;
- the whistleblower must not be involved in the criminal activity;
- payments will not be offered until all victims have been compensated; and
- payments will not be offered if there is already an existing financial-disclosure incentive (e.g., another federal whistleblower program).^[4]

The requirement that whistleblowers only qualify if they submit truthful information unknown to the government is critical because it creates an incentive for whistleblowers to come forward quickly and reinforces voluntary self-disclosure requirements. As Monaco put it, “when everyone needs to be first in the door, no one wants to be second.”

Monaco expects a formal start date for the program later this year. She appealed to potential whistleblowers to come forward and noted a special interest in information about criminal abuses of the U.S. financial system, foreign corruption cases outside the SEC’s jurisdiction, and domestic corruption cases.

DOJ KEPT PROMISES OF CORPORATE ENFORCEMENT OF INCENTIVES AND DETERRENTS

In addition to her discussion of the new whistleblower pilot program, Monaco dedicated some of her talk to a description of DOJ’s specific efforts to keep the corporate enforcement promises it has made in recent years.

Since 2021, DOJ has announced and reiterated major changes to its corporate enforcement policies.^[5] Last year, for example, Monaco built on the major changes she announced in 2021^[6] and 2022^[7] by announcing the implementation of “predictable and transparent voluntary self-disclosure program[s]” in every DOJ component prosecuting corporate crime.^[8] Under these programs, “absent aggravating factors, no department component will seek a guilty plea where a company has voluntarily self-disclosed, cooperated, and remediated the misconduct.”^[9] She also described DOJ’s Pilot Program on Compensation Incentives and Clawbacks, under which criminal resolutions will require companies to revise compensation systems with an eye toward compliance, and DOJ will reduce fines for companies that seek to claw back compensation from wrongdoers.^[10]

Monaco has said these changes were “only the first steps” of DOJ’s more aggressive approach to corporate enforcement. In her March 2024 remarks, Monaco highlighted several ways DOJ has been making good on those promises.

Monaco first reiterated that DOJ’s top priority is individual accountability, pointing to convictions in the past few years of key executives and directors at fintech companies, healthcare companies, and financial institutions. She said she expects prosecutors to “be bold” and “follow every corporate case up the company’s org chart,” which means DOJ is taking more cases to trial.

Monaco next illustrated the firm hand DOJ has taken recently with corporate recidivists, highlighting two cases in which DOJ imposed greater penalties because of the companies’ historical misconduct. In one case, DOJ required a corporate guilty plea from a company when it breached an earlier DPA. In the other case, DOJ required a company to sell an entire product line to resolve a 2023 price fixing investigation because of a 2016 DPA for an FCPA violation. Monaco encouraged companies with prior misconduct to “invest and reinvest in your compliance programs.” She said, “I can assure you the price of committing another violation will be far higher than the cost of preventing one.”

Monaco also touched on incentives for pro-compliance behavior. For example, the Criminal Division has recently provided “a dollar-for-dollar credit to companies that claw back or withhold compensation from culpable employees.” And DOJ has placed a premium on voluntary self-disclosure. According to Monaco, “no matter how good a company’s cooperation, a resolution will always be more favorable with voluntary self-disclosure.” She also noted that two different U.S. Attorney’s Offices are piloting self-disclosure programs for individuals.

Finally, Monaco mentioned the double-edged sword of artificial intelligence (AI), explaining that AI holds great promise but also great peril when used by criminals to “supercharge” their crimes. Because DOJ believes the use

of AI in criminal activity presents especially serious risks, prosecutors will seek higher sentences for wrongdoers—individual and corporate—who deliberately misuse AI to perpetrate their crimes. DOJ will also consider a company’s ability to manage AI-related risks when assessing its compliance program and its overall compliance efforts. In addition, Monaco announced “Justice AI,” a new initiative involving meetings among “stakeholders across industry, academia, law enforcement, and civil society” to discuss AI and “inform the Department’s AI policy on a range of fronts.”

KEY TAKEAWAYS

- DOJ has taken significant steps toward a more aggressive approach to corporate enforcement.
- DOJ is building its own whistleblower rewards program for individuals who help DOJ discover otherwise unknown significant corporate or financial misconduct and who are not involved in the misconduct, with rewards coming out of resulting forfeitures after victims are compensated. DOJ expects to provide further details and formally start the new program later in 2024.
- DOJ’s new whistleblower program is expected to reinforce corporate voluntary self-disclosure program requirements. A whistleblower can only earn a financial reward for submission of information previously unknown to DOJ, and DOJ reserves the most favorable corporate resolutions for companies that voluntarily self-disclose before DOJ discovers the violation. Thus, companies and whistleblowers both have strong incentives to be first through the door.
- DOJ continues to focus on holding individuals accountable for their part in corporate malfeasance, including key executives. Prosecutors have been urged to follow all investigations of corporate wrongdoing up a company’s organizational chart, leading to more individual prosecutions and convictions.
- DOJ has demonstrated its resolve to impose higher penalties on corporate recidivists. DOJ urges companies to “invest and re-invest” in compliance programs, warning companies that “the price of committing another violation will be far higher than the cost of preventing one.”
- DOJ continues to incentivize pro-compliance behavior, emphasizing the benefits of voluntary self-disclosure and the “dollar-for-dollar” credit that companies could receive for withholding or clawing back compensation from culpable employees.
- DOJ will seek higher sentences for corporate wrongdoers who perpetrate their crimes through the misuse of AI, and companies are now on notice that DOJ will consider their approach to AI-related risks as part of assessing their compliance efforts.

If you have any questions regarding this or related subjects or if you need assistance, please contact [Suzanne Jaffe Bloom](#) (Partner and Co-Chair, Government Investigations, Enforcement, and Compliance Practice) or [Jack Knight](#) (Partner, Government Investigations, Enforcement, and Compliance Practice; Chair, Financial Services Litigation Practice) or your Winston & Strawn relationship attorney. You can also visit our Government Investigations, Enforcement, and Compliance practice group webpage [here](#), for more information on this and related subjects. [Patrick Doerr](#) (Associate, Government Investigations, Enforcement, and Compliance Practice) contributed to this article.

[1] DOJ, *Deputy Attorney General Lisa Monaco Delivers Keynote Remarks at the American Bar Association’s 39th National Institute on White Collar Crime* (Mar. 7, 2024), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-keynote-remarks-american-bar-associations>.

[2] See U.S. Dep’t of Just., Just. Manual § 9-28.900(A)(3) (Mar. 2024). Under this program, DOJ will apply a presumption in favor of declining prosecution when the company voluntarily self-discloses, fully cooperates, and timely and appropriately remediates “misconduct uncovered as a result of due diligence conducted shortly before or shortly after a lawful, bona fide acquisition of another corporate entity.”

[3] Acting Assistant Attorney General Nicole Argentieri discussed these requirements in a speech the next day. See DOJ, *Acting Assistant Attorney General Nicole M. Argentieri Delivers Keynote Speech at the American Bar*

Association’s 39th National Institute on White Collar Crime (Mar. 8, 2024), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-keynote-speech-american>.

[4] Argentieri also expects DOJ to implement a monetary threshold (e.g., payments only when DOJ recovers a minimum dollar amount).

[5] E.g., DOJ, *Deputy Attorney General Lisa Monaco Delivers Remarks at American Bar Association National Institute on White Collar Crime* (Mar. 2, 2023), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-remarks-american-bar-association-national>.

[6] See Winston & Strawn, *DOJ Announces Major Changes in Corporate Enforcement Policies* (Oct. 29, 2021), <https://www.winston.com/en/blogs-and-podcasts/investigations-enforcement-and-compliance-alerts/doj-announces-major-changes-in-corporate-enforcement-policies>. Among other things, in 2021, Monaco reinstated a requirement that companies seeking cooperation credit provide DOJ with information on all individuals involved in the misconduct, and she promised that DOJ would place a much greater emphasis on a company’s history of misconduct when evaluating charging decisions.

[7] Winston & Strawn, “Do More and Move Faster” – The DOJ Announces Significant Policy Changes to Prioritize Corporate Criminal Prosecutions (Sept. 20, 2022), <https://www.winston.com/en/blogs-and-podcasts/investigations-enforcement-and-compliance-alerts/do-more-and-move-faster-the-doj-announces-significant-policy-changes-to-prioritize-corporate-criminal-prosecutions>. In 2022, Monaco announced that DOJ would consider a company’s compensation system (including clawback provisions) when evaluating how to resolve a corporate criminal investigation, and she expanded on DOJ’s expectation that companies must disclose important evidence more quickly.

[8] DOJ, *Deputy Attorney General Lisa Monaco Delivers Remarks at American Bar Association National Institute on White Collar Crime* (Mar. 2, 2023), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-remarks-american-bar-association-national>.

[9] *Id.*

[10] *Id.*

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