

Insights

NEW DOJ PILOT PROGRAM INCENTIVIZES INDIVIDUALS TO REPORT CRIMINAL CONDUCT

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Companies beware! The U.S. Department of Justice (DOJ) announced a pilot program “designed to encourage voluntary self-disclosure by individual participants in certain types of criminal conduct involving corporations.” In other words, even if you may have participated in a company’s wrongdoing, we will give you a get out of jail free card – a mandatory non-prosecution agreement (NPA) – if you meet the criteria of this program. DOJ hopes that this program will lead to more corporate crime being reported to it as well as further encouraging companies to create, maintain and strengthen compliance programs.

The criteria are as follows:

- It must be made to the DOJ program.
- It must be **original information** that the DOJ was unaware of that relates to one of the following kinds of crimes: financial institutions, integrity of financial markets, foreign corruption and bribery, health care fraud, federally funded contracting, and domestic bribery and kickbacks. Note that the crimes generally must involve public companies or private companies with 50 or more employees.
- It must be **voluntary** in that it is received before the threat of criminal or civil investigation.
- It must be **truthful and complete**.
- The individual must agree to **cooperate fully and provide substantial assistance** to the DOJ in its investigation and prosecution of others.
- The “individual must agree to forfeit or disgorge any profit from the criminal wrongdoing and pay restitution or victim compensation.”
- The individual must not have engaged in a crime of violence or force or sex offense; is not the CEO or CFO or the organizer/leader of the scheme; is not a government official – foreign or domestic; and has not been convicted of a felony or any kind of offense involving fraud or dishonesty.

This pilot program in a sense codifies what the DOJ has had the ability to do, but has rarely done, even with cooperators—allowed individuals to avoid convictions entirely (rather than obtain lenient plea resolutions), if they come in to report a crime even if that individual was involved in part of that crime. The pilot program gives certainty to individuals that they will not go to jail if they voluntarily disclose the crime and meet the above criteria. This will likely increase the number of reports of corporate crime filed with the DOJ.

This new incentive comes on the heels of the DOJ's [earlier announcement](#) that it is working on a program to further incentivize voluntary disclosure by granting whistleblower awards from forfeited amounts to individuals who voluntarily disclose corporate misconduct. The government is pulling out all stops to increase pressure on companies to ensure that they are following the law. Indeed, the notice is careful to mention that even if an individual coming forward under the pilot program does not satisfy all the criteria under the program, the DOJ still has discretion to offer an NPA.

This new pilot program is just the latest reason companies should implement and maintain compliance programs that address their specific risk profile. The BCLP white collar team can assist in evaluating and strengthening your company's compliance program as well as conduct internal investigations when issues arise. In addition, our lawyers will fight to defend companies and individuals when DOJ prosecutors come knocking on the door.

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