

What you can learn from the DOJ's new approach to corporate accountability

Forensic & Integrity Services

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On August 1, 2024, the U.S. Department of Justice (DOJ) Criminal Division announced a new corporate whistle-blower rewards pilot program that incentivizes individuals to come forward when significant corporate or financial misconduct has been identified.

The DOJ program is intended to “fill the gaps” of existing whistle-blower programs established by other US agencies by covering four areas of corporate crime that are not already addressed by other programs:

- ▶ Foreign corruption such as violations of the Foreign Corrupt Practices Act (FCPA) or the recently enacted Foreign Extortion Prevention Act (FEPA)
- ▶ Criminal abuses of the US financial system
- ▶ Domestic corruption, specifically involving bribery of government officials
- ▶ Healthcare fraud involving private insurers

Putting the DOJ's whistle-blower program in context

The announcement of a whistle-blower program is the latest in a series of moves by the DOJ to prioritize corporate accountability, in particular by incentivizing self-reporting by companies that violate federal laws and by requiring that companies take steps to minimize recidivism. In October 2022, Deputy Attorney General Lisa Monaco circulated a memorandum to all U.S. Attorney Offices with several revisions to the DOJ's corporate criminal enforcement priorities. Subsequently, the DOJ has announced updates to its Voluntary Self-Disclosure Policy (VSD) and its Evaluation of Corporate Compliance Programs (ECCP) guidance.

The DOJ has also recently piloted whistle-blower programs in the Southern District of New York and the Northern District of California. These programs incentivized reporting by allowing an individual to receive a non-prosecution agreement (NPA) if certain conditions are met. The nationwide program announced by the DOJ provides a financial incentive of up to 30% of any assets forfeited by a company as a result of original information or analysis provided.

Steps to take now ahead of the program's launch

“The upcoming program highlights the need for companies to maintain a robust, effective and frequently updated compliance programs, including whistle-blower policies,” say L. Rush Atkinson and John Carlin, partners at Paul Weiss in Washington, DC, and former senior officials in the Justice Department who oversaw white-collar enforcement under Attorney General Merrick Garland.

Industry research published in 2023 revealed that approximately 25% of companies still have no internal hotline or reporting mechanism. Employees who are unable to report issues internally are increasingly incentivized to bring these reports to external authorities.

Companies with established reporting mechanisms can take this opportunity to review and revise their policies to account for an ever-changing landscape, particularly with regard to emerging data, economic sanctions, extended third-party risks and the use of artificial intelligence (AI) tools. This may also involve establishing proactive transaction monitoring and analytics to reduce a company's reliance on tips.

How EY Forensic & Integrity Services can help

EY Forensic & Integrity Services provides a rapid, scalable and customized approach to help companies assess the maturity of their organization-wide whistle-blower and investigation program and recommend enhancements and industry leading practices. We can support at various stages of the program, including:

- ▶ Design and effectiveness assessments
- ▶ Monitoring and analytics
- ▶ Case management
- ▶ Response and remediation

Our forensic technology solutions combine our industry and investigative experience with advanced analytical tools that take advantage of the latest innovations in complex data management and AI. We have successfully deployed monitoring tools that allow our clients to identify trends and issues before they become reportable events.



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