

DOJ Announces New Pilot Program Seeking Voluntary Self-Disclosures from Culpable Individuals Aimed At Uncovering Corporate Misconduct

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On April 15, 2024, the Criminal Division of the Department of Justice (“DOJ”) launched the Pilot Program on Voluntary Self-Disclosure for Individuals (“the Individual VSD Pilot Program”), which represents the latest in a string of announcements by DOJ focused on catching companies and individuals that engage in corporate crime. The Individual VSD Pilot Program is intended to incentivize culpable individuals to self-report their misconduct and to cooperate in DOJ’s investigation and prosecution of other individuals and companies that have engaged in corporate wrongdoing. In exchange, DOJ Criminal Division prosecutors will offer mandatory non-prosecution agreements (“NPAs”) to those individuals who provide original and actionable information, and otherwise meet the requirements of the new pilot program.¹

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¹ The Criminal Division’s Pilot Program on Voluntary Self-Disclosures for Individuals (Apr. 15, 2024), *available at* <https://www.justice.gov/criminal/media/1347991/dl?inline>.
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The announcement of the Individual VSD Pilot Program comes approximately six weeks after Deputy Attorney General Lisa Monaco announced a “90-day sprint” to design and implement a comprehensive DOJ whistleblower rewards program that will be implemented later this year as a means of incentivizing individuals to come forward with evidence of corporate wrongdoing.² While the whistleblower rewards program will be focused on providing monetary rewards to whistleblowers who were not involved in the underlying criminal activity, the Individual VSD Pilot Program will be targeting information and self-reports from individuals who were part of the scheme and “in the fold” – in other words, cooperators who can provide insights to prosecutors and law enforcement agents about the inner workings of a scheme and the individuals and companies responsible, in exchange for an agreement to not be prosecuted. As noted by Principal Deputy Assistant Attorney General Nicole M. Argentieri in a blogpost issued by DOJ on the topic, “Sometimes, the best evidence of corporate wrongdoing involves a company insider.”³

Like the whistleblower rewards program and the Corporate Enforcement and Voluntary Self-Disclosure Policy applicable to companies, the Individual VSD Pilot Program requires an individual to be the “first in the door.” This places companies and individuals in a direct race to report misconduct, with individuals involved in the wrongdoing likely having the advantage of understanding their own involvement before the company may be able to determine it based on its own internal investigation, especially within large, multinational companies. As framed by PDAAG Argentieri’s recent blogpost, “With this announcement, we are telling employees everywhere—at nearly every level of an organization—if you’ve been involved in crime, now

is your time to come forward to the Criminal Division. Call us before we call you.”⁴

Voluntary Disclosure

Consistent with recent policy announcements regarding corporate criminal enforcement, the Individual VSD Pilot Program underscores the premium that DOJ is putting on voluntary self-disclosure and highlights the efforts by DOJ to use every available means to detect and investigate corporate crime. It also shows the lengths to which DOJ will go to incentivize individuals to report “actionable, original information” regarding misconduct where DOJ may not otherwise be able to detect it. Under the Individual VSD Pilot Program, such a voluntary disclosure must be made:

1. “before any request, inquiry, or demand that relates to the subject matter” of the individual’s submission;
2. without any “preexisting obligation” for the individual under a prior agreement related to a criminal prosecution or civil enforcement action (such as a cooperation plea agreement); and
3. without any government investigation or threat of imminent disclosure to the government or the public.⁵

Who is Eligible for the Program?

The Individual VSD Pilot Program uniquely incentivizes individuals involved in misconduct to self-report to DOJ, but only if they do not fall into certain excludable categories:

- CEOs, CFOs (or their equivalents), and/or organizers/leaders of the scheme;
- elected or appointed foreign government officials;
- domestic government officials at any level;

[divisions-voluntary-self-disclosures-pilot-program-individuals.](#)

⁴ *Id.*

⁵ The Criminal Division’s Pilot Program on Voluntary Self-Disclosures for Individuals, *supra* n. 1.

² See our prior Alert Memo on this topic, DOJ Announces New White Collar Whistleblower Program and Increased Focus on the Use of AI [here](#).

³ DOJ Blogpost, Criminal Division’s Voluntary Self-Disclosures Pilot Program for Individuals (Apr. 22, 2024), available at <https://www.justice.gov/opa/blog/criminal->

- individuals previously convicted of a felony of any kind for conduct involving fraud or dishonesty; and
- individuals engaged in criminal conduct involving violence, use of force, threats, substantial patient harm, any sex offense involving fraud, force, or coercion, or relating to a minor, or any offense involving terrorism.

Furthermore, under the Individual VSD Pilot Program, otherwise culpable individuals will receive an NPA if they:

- voluntarily, truthfully, and completely self-disclose original information regarding misconduct unknown to DOJ in certain core enforcement areas;
- fully cooperate⁶ and provide substantial assistance to DOJ in its investigation of related conduct and the prosecution of equally or more culpable individuals or companies; and
- pay any applicable victim compensation, restitution, forfeiture, or disgorgement, including returning any ill-gotten gains.⁷

Applicable Violations

The Individual VSD Pilot Program applies broadly to all corporate misconduct, but specifically identifies certain “*high priority enforcement*” areas of focus for the DOJ Criminal Division, including the Fraud Section, Money Laundering and Asset Recovery Section, and the Public Integrity Section, including:

- schemes involving financial institutions—including money laundering and criminal compliance-related schemes;
- schemes related to the integrity of financial markets involving financial institutions, investment advisors or funds, or public or large private companies;
- foreign corruption schemes, including violations of the Foreign Corrupt Practices Act (FCPA), Foreign Extortion Prevention Act (FEPA), and associated money laundering;
- health care fraud and kickback schemes;
- federal contract fraud schemes; and
- domestic corruption schemes involving bribes or kickbacks paid by or through public or private companies.⁸

Intake Form for Contacting the DOJ

The DOJ has created a landing page on the Criminal Division’s website⁹ where individuals may download, complete, and submit a Voluntary Self Disclosure Intake Form. The form requires individuals to identify themselves, any counsel representing them, the corporate entity involved, and a brief description of the misconduct. The Intake Form emphasizes the “conditions of eligibility” for the program, as enumerated above.

Key Takeaways

- Alongside other recent voluntary disclosure policies released by U.S. Attorney’s Offices—namely the Southern District of New York¹⁰ and the Northern District of California¹¹—the

⁶ Cooperation includes “assistance in the investigation and prosecution of those equally or more culpable—whether by providing truthful and complete testimony, producing documents and other evidence, or working proactively under the supervision of law enforcement.” DOJ Blogpost, *supra* n. 3.

⁷ The Criminal Division’s Pilot Program on Voluntary Self-Disclosures for Individuals, *supra* n. 1.

⁸ DOJ Blogpost *supra* n. 3.

⁹ Criminal Division Pilot Program On Voluntary Self-Disclosures For Individuals (Apr. 15, 2024), *available*

at <https://www.justice.gov/criminal/criminal-division-pilot-program-voluntary-self-disclosures-individuals>.

¹⁰ SDNY Whistleblower Pilot Program (Feb. 13, 2024), *available* at <https://www.justice.gov/usao-sdny/sdny-whistleblower-pilot-program>.

¹¹ Press Release, U.S. Attorney Ismail Ramsey Announces Policies Underlying Whistleblower Pilot Program (Mar. 18, 2024), *available* at <https://www.justice.gov/usao-ndca/pr/us-attorney-ismail-ramsey-announces-policies-underlying-whistleblower-pilot-program>.

Individual VSD Pilot Program places individuals in a race against companies (most likely, their employers) to be “first in the door” for reporting corporate misconduct to authorities. The Individual VSD Pilot Program also requires reporting to the DOJ Criminal Division, which is significant for certain types of cases, such as investigations related to foreign bribery under the FCPA and FEPA over which the Criminal Division’s Fraud Section has primacy. Whereas other recent DOJ announcements have emphasized individual liability as a critical policy goal, this most recent announcement reverses the directionality of reporting—by encouraging individuals to cooperate against companies and other individuals in exchange for leniency. As PDAAG Argentieri explained, “At bottom, making NPAs available to individuals who come forward to report corporate crime and cooperate allows [DOJ] to prosecute more culpable individuals and to hold companies to account.”¹²

- “When everyone needs to be first in the door, no one wants to be second.”¹³ Companies should evaluate their internal processes and procedures for reporting and investigating misconduct reports on a timely basis. Because culpable individuals who participated in misconduct may be incentivized by the Individual VSD Pilot Program to report directly to DOJ to avoid prosecution, companies will need to balance conducting a thorough, confidential and complete internal investigation with “tipping off” individuals involved in misconduct. The launch of an internal investigation may itself become a new trigger for an employee who participated in misconduct not yet known to management to rush to beat the company, report original information, and benefit from the NPA.
- In addition, companies should focus their attention on existing whistleblower and compliance

programs and assess their ability to effectively detect and investigate misconduct. More than ever, companies have renewed incentives to evaluate their existing whistleblower reporting and internal investigation protocols to enhance mechanisms that will ensure timely and appropriate review of complaints, allow the company to investigate alleged misconduct in a way that protects the confidentiality and integrity of the inquiry, and enable and encourage quick action on decision-making where potential misconduct is identified.

- The promise of an NPA still comes at a significant cost to the reporting individual who must, among other things, voluntarily disclose all relevant information, fully cooperate with authorities, and forfeit any ill-gotten gains. Nevertheless, companies should remain mindful that an individual employee involved in misconduct may look to skip ahead of the company or others within the company to be “first in the door” to self-report the misconduct.
- Additionally, DOJ will need to weigh the pros and cons of using a cooperator identified through the pilot program given the particular facts and circumstances of a case, as it usually does. In many criminal prosecutions, there can be issues with over-relying on cooperators who will be confronted with the “deal” they received in exchange for their cooperation, particularly when the deal is a non-prosecution agreement. Several of the requirements of the Individual VSD Pilot Program seem purposefully crafted to safeguard against that type of risk and insulate DOJ from arguments that they have given a “pass” to certain individuals while prosecuting others for the same conduct. In addition, while the Individual VSD pilot program applies to cooperation against other individuals, it is also targeted at cooperation against companies, where this issue may present

¹² DOJ Blogpost *supra* n. 3.

¹³ Speech, Deputy Attorney General Lisa Monaco Delivers Keynote Remarks at the American Bar Association’s 39th National Institute on White Collar Crime

(Mar. 7, 2024), available at <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-keynote-remarks-american-bar-associations>.

less risk for DOJ, since many corporate cases result in a resolution.

- Companies making employee disciplinary decisions, specifically dismissals (*e.g.*, following an internal investigation) should consider the terms of such dismissals. To the extent companies make it a practice to enter into a non-disclosure agreement (NDA) with former employees upon dismissal, they should be careful to avoid any perception that such agreements would be viewed as an effort to chill or prevent reporting to authorities.
- It remains to be seen how this pilot program will interact with other recently announced DOJ policies, including the Criminal Division’s Pilot Program Regarding Compensation Incentives and Clawbacks.¹⁴ Under the terms of the Individual VSD Pilot Program, an individual must pay any applicable victim compensation, restitution, forfeiture, or disgorgement, including returning any ill-gotten gains. Employers should ensure that clawback provisions are explicit in employment contracts upon hiring or contract renewal, making clear that enforcement of such provisions is neither retaliatory nor aimed to discourage the individual from reporting misconduct.
- For companies, documenting the early steps of an internal investigation will likely take on even greater importance. Emphasizing the confidentiality of the investigation will be key to avoiding a situation in which a culpable individual who is otherwise unaware of the company’s internal investigation learns about it and looks to jump ahead of the company by self-reporting while the company is still in the midst of investigating.

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¹⁴ See our summary on this separate Pilot Program [here](#).