

# DOJ Announces New White Collar Whistleblower Program and Increased Focus on the Use of AI

March 13, 2024

In a recent speech at the American Bar Association’s Institute on White Collar Crime, leadership from the Department of Justice made several announcements building on other policy initiatives and guidance issued by the DOJ over the last couple of years. Deputy Attorney General Lisa Monaco made the biggest headline by announcing that the DOJ will institute a whistleblower bounty program to financially incentivize potential informants to report evidence of white collar crime to the DOJ.<sup>1</sup> Harkening back to the days of “Wanted” posters in the Old West, DAG Monaco noted that “law enforcement has long offered rewards to coax tipsters out of the woodwork.”<sup>2</sup>

The DOJ is now on a “90-day sprint” to design and implement the pilot whistleblower program, with its formal start coming sometime later this year.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors.

**David Last**

+1 202 974 1650

[dlast@cgsh.com](mailto:dlast@cgsh.com)

**Jennifer Kennedy Park**

+1 650 815 4130

[jkpark@cgsh.com](mailto:jkpark@cgsh.com)

**Matt Solomon**

+1 202 974 1680

[msolomon@cgsh.com](mailto:msolomon@cgsh.com)

**Lisa Vicens**

+1 212 225 2524

[evicens@cgsh.com](mailto:evicens@cgsh.com)

**Rahul Mukhi**

+1 212 225 2912

[mukhi@cgsh.com](mailto:mukhi@cgsh.com)

**Theodore Salem-Mackall**

+1 202 974 1592

[tsalemmackall@cgsh.com](mailto:tsalemmackall@cgsh.com)

**Abbey Doyno**

+1 415 796 4405

[adoyno@cgsh.com](mailto:adoyno@cgsh.com)

<sup>1</sup> See “Deputy Attorney General Lisa Monaco Delivers Keynote Remarks at the American Bar Association’s 39th National Institute on White Collar Crime” (Mar. 7, 2023) <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-keynote-remarks-american-bar-associations> (hereinafter “DAG Monaco Keynote Remarks”).

<sup>2</sup> *Id.*



In her keynote speech, Monaco also emphasized DOJ's focus on the use of artificial intelligence in corporate misconduct, noting that while AI "holds great promise to improve our lives," it presents "great peril when criminals use it to supercharge their illegal activities, including corporate crime."<sup>3</sup> She added that DOJ prosecutors will seek more severe sentences in cases in which AI is deliberately misused, resulting in aggravated criminal conduct. When evaluating corporate compliance programs DOJ will also assess the degree to which a company's compliance program manages AI-related risks.<sup>4</sup>

### DOJ's Whistleblower Pilot Program

The upcoming pilot program, according to DAG Monaco, would fill important gaps left by other whistleblower reward programs and address the full range of corporate and financial misconduct that DOJ investigates and prosecutes. Current laws authorize DOJ to pay awards for information or assistance leading to civil or criminal forfeiture, but never as part of a specific program.

Under the pilot program, where an individual whistleblower helps uncover "significant corporate or financial misconduct," that whistleblower could qualify to receive a portion of the resulting forfeiture. Payments would be disbursed only when:

- All victims were already properly compensated;
- The whistleblower submitted truthful information not already known to the government;
- The whistleblower was not involved in the criminal activity; and

- The whistleblower reported information where there is not already an existing financial incentive to disclose (e.g., a qui tam action or another federal whistleblower program).<sup>5</sup>

Although the DOJ will accept information about violations of any federal law, DAG Monaco said that the DOJ is "especially interested" in information regarding:

- Criminal abuses of the U.S. financial system;
- Foreign corruption cases outside the jurisdiction of the SEC, including violations of the Foreign Corrupt Practices Act (FCPA) by non-issuers and violations of the recently enacted Foreign Extortion Prevention Act (FEPA);<sup>6</sup> and
- Domestic corruption cases.<sup>7</sup>

One day after DAG Monaco's remarks, Nicole Argentieri, Acting Assistant Attorney General for the DOJ Criminal Division, provided further details of how the DOJ's program would take shape.<sup>8</sup> Drawing on the DOJ's statutory authority under Title 28 of the U.S. Code, which authorizes the Attorney General to pay awards for "information or assistance leading to civil or criminal forfeitures," AAG Argentieri explained that the program will be led by the DOJ's Money Laundering and Asset Recovery Section (MLARS), in coordination with U.S. Attorney's Offices, the FBI, and other DOJ offices.<sup>9</sup> These offices will coordinate to develop program guidelines and address eligibility requirements.<sup>10</sup> AAG Argentieri also emphasized that the DOJ's program would "fill gaps" in the existing framework of federal whistleblower programs, which currently includes the

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See "Congress Passes Foreign Extortion Prevention Act to Prosecute Corrupt Foreign Officials," CLEARY GOTTlieb STEEN & HAMILTON LLP (Dec. 22, 2023) <https://www.clearygottlieb.com/news-and-insights/publication-listing/congress-passes-foreign-extortion-prevention-act-to-prosecute-corrupt-foreign-officials>.

<sup>7</sup> See "DAG Monaco Keynote Remarks."

<sup>8</sup> See "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>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

SEC, CFTC, FinCEN, IRS, and other, more limited DOJ programs.<sup>11</sup>

### **Building on the Success of Other Whistleblower Programs**

In announcing its own whistleblower rewards program, DOJ is looking to build on the success of whistleblower programs implemented by the SEC, CFTC, and other agencies. The SEC's whistleblower program has resulted in tens of thousands of tips and information leading to SEC enforcement actions, and the SEC has awarded more than \$1.9 billion to 397 individual whistleblowers since the beginning of its program in 2011.<sup>12</sup> In 2023 alone, the SEC received more than 18,000 whistleblower tips, which was nearly a 50% increase over the prior record set in 2022. And in 2023, the SEC awarded nearly \$600 million to 68 individual whistleblowers, including a single award for almost \$279 million—the largest in the history of its whistleblower program.<sup>13</sup>

AAG Argentieri also highlighted that certain aspects of the DOJ's whistleblower program would mirror those of the SEC and CFTC. For example, similar to the SEC and CFTC, DOJ intends to include a monetary threshold limiting recovery to cases resulting in sanctions exceeding \$1 million, and further limit whistleblower eligibility to those who are “first in the door” to report and only where information is reported voluntarily and not in response to a government inquiry, pre-existing reporting obligation, or imminent threat of disclosure.<sup>14</sup> This latter requirement mirrors the DOJ's requirement for corporate self-disclosures under its Corporate Enforcement Policy, creating a “multiplier effect” for incentivizing early and timely disclosure by companies: “When everyone needs to be first in the door, no one wants to be second.”<sup>15</sup>

### **A Focus on Artificial Intelligence**

DAG Monaco also highlighted artificial intelligence as a DOJ enforcement priority, outlining the DOJ's approach and focus on the use of AI to facilitate white-collar crime. According to DAG Monaco, the DOJ will now seek stiffer sentences against individual and corporate defendants who “deliberately misuse[]” AI to facilitate a white-collar crime. DOJ prosecutors will also factor into the evaluation of a corporate compliance program whether a corporation has taken efforts to mitigate risks associated with the use of AI.<sup>16</sup>

This focus on artificial intelligence and technology companies was evident throughout the Institute on White Collar Crime's events. The U.S. Attorney for the Northern District of California previewed a forthcoming whistleblower program that will focus on intellectual property issues. U.S. Attorney General Merrick Garland also highlighted a recent federal grand jury indictment of an individual alleged to have stolen AI secrets from a large technology company.<sup>17</sup>

### **Key Takeaways**

The DOJ's new whistleblower program likely will lead, after some period of time, to an uptick in enforcement actions in a range of statutory contexts, especially in the FCPA context, just as the SEC's whistleblower program sparked an increase in reports and cases over the last decade. FCPA investigations and prosecutions could become more prevalent because such matters often include very large criminal penalties and forfeiture amounts that could significantly heighten the incentives for potential whistleblowers to report conduct related to foreign bribery. As a result, the new whistleblower program also adds to the pressure that companies face to make self-disclosure determinations early on in their

<sup>11</sup> *Id.*

<sup>12</sup> See SECURITIES & EXCHANGE COMM'N, Securities and Exchange Commission Office of the Whistleblower Annual Report to Congress for Fiscal Year 2023,” at \*1-2 (Nov. 14, 2023) <https://www.sec.gov/files/fy23-annual-report.pdf>

<sup>13</sup> *Id.*

<sup>14</sup> See “DAG Monaco Keynote Remarks.”

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> DEPARTMENT OF JUSTICE, “Attorney General Merrick B. Garland Holds Fireside Chat at the American Bar Association's 39th Annual White Collar Institute,” (Mar. 6, 2024) <https://www.justice.gov/opa/video/attorney-general-merrick-b-garland-holds-fireside-chat-american-bar-associations-39th>.

investigative process, as both whistleblowers and companies will only receive credit for reports of potential misconduct when they are the first in the door.

The new program and stated focus on the use of AI also underscores that corporations should continue to focus their attention on their compliance programs. In particular, with respect to whistleblower policies and reporting channels, companies should ensure that such programs are publicized and available throughout the organization, that there are appropriate processes and procedures in place for the evaluation and escalation of internal whistleblower reports and that appropriate protections and incentives are in place to encourage internal whistleblowers, ensure their anonymity and prevent retaliation. In addition, companies should consider whether their compliance programs address and effectively safeguard their enterprises from the risk of misuse of AI. As noted by AAG Argentieri, “A strong compliance program is key to preventing corporate crime before it occurs and to addressing misconduct when it does take place.”<sup>18</sup>

...

CLEARY GOTTLIB

---

<sup>18</sup> See “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>.