

CLIENT ALERT

SDNY Unveils New Whistleblower Pilot Program

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On January 10, 2024, the United States Attorney’s Office for the Southern District of New York (“SDNY” or the “Southern District”) announced a whistleblower pilot program (the “SDNY Whistleblower Pilot Program”) designed to encourage early and voluntary self-disclosure of criminal conduct by individual participants in certain non-violent offenses.¹ The launch of the Program seeks to incentivize individuals and their legal representatives to provide actionable and timely information and cooperate with authorities in the prosecution of criminal conduct,² and builds upon the previously issued United States Attorneys’ Offices Voluntary Self-Disclosure Policy, which applied to companies.³ “We encourage people who qualify for the whistleblower pilot program to take advantage of the opportunity to come clean, cooperate, and get on the right side of the law,” said U.S. Attorney for the Southern District of New York Damian Williams, “Our message to the world remains: ‘Call us before we call you.’”

The SDNY Whistleblower Pilot Program offers the potential of non-prosecution agreements as cooperation incentives to individuals who voluntarily disclose and cooperate against others involved in criminal conduct under certain specified conditions. To be eligible for the program, the individual must:

¹ U.S. Attorney Williams Announces Enforcement Priorities And SDNY Whistleblower Pilot Program, United States Attorney’s Office for the Southern District of New York (Jan. 10, 2024), <https://www.justice.gov/usao-sdny/pr/us-attorney-williams-announces-enforcement-priorities-and-sdny-whistleblower-pilot>.

² For previous client alerts discussing developments in the Department of Justice’s corporate enforcement efforts, please see, e.g., [here](#); [here](#); and [here](#).

³ U.S. Attorney’s Offices Voluntary Self-Disclosure Policy: 93 Policies in One? Or No Policy at All? (Feb. 28, 2023), [here](#).

SDNY Unveils New Whistleblower Pilot Program

- disclose conduct that is not public or otherwise already known to the government;
- act voluntarily and not in response to a government inquiry or reporting obligation;
- provide substantial assistance in any investigation and potential prosecution arising from the information reported; and
- completely and truthfully disclose all criminal conduct the individual participated in or is aware of.

Notably, the SDNY will not extend the benefits of the program to CEOs and CFOs of either public or private companies; to those with a duty to report misconduct (i.e., auditors); to those with prior felony convictions (or other criminal convictions implicating honesty) or to government officials, including law enforcement. The program also does not apply to individuals who are or are expected to be “of major public interest,” a term undefined by the policy.

The Southern District’s program is principally focused on financial crimes,⁴ as well as local public corruption and misuse of federal funds. The policy explicitly states it applies to individuals who disclose information “regarding criminal conduct undertaken by or through public or private companies, exchanges, financial institutions, investment advisers, or investment funds involving fraud or corporate control failures or affecting market integrity or criminal conduct involving state or local bribery or fraud relating to federal, state, or local funds.”⁵ As such, the policy does not extend to violations of the Foreign Corrupt Practices Act, bribery of federal officials, or campaign finance crimes.

The launch of the SDNY Whistleblower Pilot Program indicates a clear commitment by the SDNY to focus on incentivizing self-disclosure at an individual level. This program goes a step further than the Department of Justice’s (the “DOJ” or the “Department”) nationwide initiative from last year, which aimed to align the benefits of voluntary self-reporting by companies to U.S. Attorney’s Offices throughout the country. The previous initiative directed U.S. Attorney’s Offices to provide incentives, including reduced fines and the potential for companies to avoid guilty pleas or the imposition of compliance monitorships, consistent with those offered under the DOJ Criminal Division’s Policy.⁶

The program also continues the Department’s steady drumbeat of messaging encouraging self-disclosure, generally. As with those programs, we urge caution before rushing to take advantage of “benefits” that may prove illusory. The program protects whistleblowers only if they share information that the government is not already aware of; something that a potential whistleblower has almost no way of knowing.⁷ The program also requires “substantial” cooperation, the definition of which

⁴ The policy has an explicit carve-out for any crime that involves force or violence, any sex offense involving fraud, force, coercion, or a minor, and any offense involving terrorism or implicating national security.

⁵ SDNY Whistleblower Pilot Program (January 10, 2024), [here](#).

⁶ U.S. Attorney’s Offices Voluntary Self-Disclosure Policy: 93 Policies in One? Or No Policy at All? (Feb. 28, 2023), [here](#).

⁷ For this reason, there exists interesting questions about the intersection with the SEC’s whistleblower program, participation in which comes with the potential of significant financial gain. Potential whistleblowers should carefully think through the sequencing of any disclosures.

SDNY Unveils New Whistleblower Pilot Program

will be in the eye of the beholder (here, SDNY). And there is no guarantee that prosecutors will not deem a whistleblower to be “of major public interest”; it is easy at this stage to envision that whistleblowers and prosecutors may have a difference of opinion as to the public’s interest level in certain matters.

As always, we urge those considering making disclosures under the program to seek advice from counsel to weigh the pros and cons of self-disclosure and to put themselves in the best position to maximize their upside in becoming a whistleblower, if advisable.

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