

## The SDNY Pilots a New Program for Whistleblowers

Last week, the U.S. Attorney's Office for the Southern District of New York (SDNY) launched a pilot program to incentivize individuals to come forward and report illegal activity. Under the program, participants in specified non-violent offenses will be eligible to receive non-prosecution agreements if they report misconduct and cooperate fully with the authorities regarding such misconduct.<sup>1</sup>

In announcing this new policy, U.S. Attorney Damian Williams stated, "By providing clarity on the requirements and benefits of such self-disclosure, we seek to incentivize individuals and their counsel to provide actionable and timely information."<sup>2</sup>

Notably, the policy applies only to certain criminal conduct, including criminal conduct undertaken by or through public or private companies, exchanges, or financial institutions, and specifically excludes other conduct, such as violations of the Foreign Corrupt Practices Act and violation of federal or state campaign financing laws. The information must be new to the U.S. Attorney's Office and valuable to them – and those reporting the conduct must be prepared to cooperate fully. Which, in the Southern District of New York, means truthful and complete disclosure of all criminal conduct in which the individual has participated and of which the individual is aware, without any temporal limitations, and full cooperation in the prosecution of others.

The policy establishes two avenues to a non-prosecution agreement, describing both a stringent set of circumstances where the U.S. Attorney's Office will likely enter into a non-prosecution agreement with the reporting individual and a more expansive set of circumstances where the U.S. Attorney's Office will consider, at its discretion, entering into a non-prosecution agreement with the whistleblower.<sup>3</sup> Some provisions of the policy are relatively straightforward, such as the exclusions of individuals with felony convictions or convictions for conduct involving fraud or dishonesty. Other provisions, such as the exclusion of individuals who are or are expected to become "of major public interest," will no doubt engender significant dispute.<sup>4</sup>

The launch of the SDNY's whistleblower pilot program comes on the heels of other Department of Justice initiatives to promote whistleblowing, including a policy to reduce fines of self-reporting corporate citizens.<sup>5</sup> The SDNY has established a dedicated e-mail address to report the criminal acts: [USANYS.WBP@usdoj.gov](mailto:USANYS.WBP@usdoj.gov). However, while the mechanics of reporting may be clear, the broader implications of the SDNY whistleblower pilot program may not be clear for some time, given the wide scope of criminal conduct the program is intended to cover and the broad discretion of the U.S. Attorney's Office to decide whether a non-prosecution agreement is appropriate under the factors set forth in the policy.

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<sup>1</sup> See SDNY Whistleblower Pilot Program (WPP Policy).

<sup>2</sup> See SDNY Press Release, U.S. Attorney Williams Announces Enforcement Priorities and SDNY Whistleblower Pilot Program (WPP Press Release).

<sup>3</sup> WPP Policy.

<sup>4</sup> *Id.* at 1.

<sup>5</sup> Memorandum from Attorney General Advisory Committee re: "United States Attorneys' Offices Voluntary Self-Disclosure Policy" (Feb. 2023).



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