

# DNJ WHISTLEBLOWER NON-PROSECUTION PILOT PROGRAM

*Effective September 13, 2024*

This memorandum describes the Whistleblower Non-Prosecution Pilot Program for the United States Attorney's Office for the District of New Jersey ("DNJ").<sup>1</sup> The purpose of the Program is to encourage early voluntary self-disclosure of criminal conduct and to promote effective enforcement of criminal laws. DNJ's Whistleblower Non-Prosecution Pilot Program applies when an individual (the "Whistleblower") discloses to DNJ information regarding criminal conduct. DNJ encourages the disclosure of information including, but not limited to, bribery, fraud, crimes by healthcare providers, corporate control failures, civil rights violations, and matters affecting market integrity. DNJ's Whistleblower Non-Prosecution Pilot Program is for individuals who participated in criminal activity and face criminal liability; it is therefore different from the Department of Justice's Corporate Whistleblower Awards Pilot Program, which is for those who did not meaningfully participate in criminal activity that falls within four subject areas, as further detailed at [justice.gov/CorporateWhistleblower](https://justice.gov/CorporateWhistleblower).

Under DNJ's Whistleblower Non-Prosecution Pilot Program, where a Whistleblower discloses criminal information, DNJ will enter into a non-prosecution agreement with the Whistleblower in exchange for the Whistleblower's cooperation, if all of the following conditions are met:

1. The criminal conduct has not previously been made public and is not already known

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<sup>1</sup> The contents of this memorandum provide internal guidance to DNJ prosecutors on legal issues. Nothing in this memorandum is intended to create any substantive or procedural rights, privileges, or benefits enforceable in any administrative, civil, or criminal matter by prospective or actual witnesses or parties. Moreover, it remains at all times in the sole discretion of DNJ to determine whether a Whistleblower has satisfied each of the conditions necessary for DNJ to enter into a non-prosecution agreement in exchange for cooperation. Where DNJ has determined that any of those conditions are not met, it remains at all times in the sole discretion of DNJ to determine whether to extend a non-prosecution agreement in exchange for cooperation. This policy does not apply to any other United States Attorney's Office or any other litigating component of the Department of Justice.

This memorandum is intended to be consistent with, and does not supersede: the whistleblower provisions of the False Claims Act (FCA), 31 U.S.C. §§ 3729-3733; and guidance from the Department of Justice, including, but not limited to, the Justice Manual, the January 2023 Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy, the March 2023 Criminal Division Evaluation of Corporate Compliance Programs, and the United States Attorneys' Offices Voluntary Self-Disclosure Policy.

The DNJ Whistleblower Non-Prosecution Pilot Program does not apply to information regarding violations of the Foreign Corrupt Practices Act, or violations of federal or state campaign financing laws, federal patronage crimes, corruption of the electoral process, bribery of federal officials, federal tax offenses, or federal environmental crimes. Such disclosures implicate other components and policies of the Department of Justice, including the Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy (Criminal Division); the Public Integrity Section (Criminal Division); the Corporate Voluntary Self-Disclosure Policy of the Tax Division (Tax Division); and the Environmental Crimes Section Voluntary Self-Disclosure Policy (Environment and Natural Resources Division).

In addition, the DNJ Whistleblower Non-Prosecution Pilot Program applies to individuals only. Corporations, companies, and other entities should follow the January 2023 Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy.

to DNJ, any component of the Department of Justice (“DOJ”), or any other component of the federal government;

2. The Whistleblower discloses the criminal conduct voluntarily to DNJ and not in response to a government inquiry or the Whistleblower’s obligation to report misconduct to DNJ, any component of DOJ, or any other component of the federal government;
3. The Whistleblower discloses the criminal conduct before imminent threat of disclosure or government investigation;
4. The Whistleblower is able to provide substantial assistance in the investigation and prosecution of one or more individuals, companies, or entities equally or more culpable than the Whistleblower, and is prepared to cooperate fully with this Office in its investigation and prosecution of the disclosed conduct;
5. The Whistleblower truthfully and completely discloses all criminal conduct of which the Whistleblower is aware, including all criminal conduct in which the Whistleblower has participated;
6. The Whistleblower is not (a) an elected federal or foreign official, (b) an official or agent of a federal investigative or federal law enforcement agency, (c) the highest-ranking person within the organization where the misconduct occurred (e.g., Chief Executive Officer, Executive Director), or (d) the person who, regardless of title, exercises primary control over the operations of the organization where the misconduct occurred;
7. The individual (a) has not originated, led or been a primary wrongdoer in the illegal activity, (b) has not committed any crimes that involved the use of force or violence or resulted in death or serious bodily injury; any sex offense involving fraud, force, or coercion, or a minor; or any offense involving terrorism, and (c) does not have a previous felony conviction involving violence or the threat of violence; a sex offense involving fraud, force, coercion, or a minor; terrorism; or fraud or dishonesty; and
8. The individual agrees to (a) forfeit or disgorge any proceeds from their own criminal wrongdoing, and (b) pay restitution to victims consistent with the individual’s role in the offense.

*Considerations for a Discretionary Non-Prosecution Agreement*

Where a Whistleblower discloses information to DNJ regarding criminal conduct, but does not meet the requirements set forth above, prosecutors may nonetheless consider, with supervisory approval and consistent with the principles set forth in the Justice Manual, exercising discretion to extend a non-prosecution agreement in exchange for the Whistleblower’s cooperation. In evaluating whether such an agreement would be in the public interest and necessary in the particular case, prosecutors and supervisors should consider, among other things, the following factors:

1. Whether and to what extent the criminal conduct had previously been made public or was previously known to DNJ, any component of DOJ, or any other component of the federal government;
2. Whether the Whistleblower disclosed the criminal conduct voluntarily to DNJ and not in response to government inquiry or the Whistleblower's reporting obligation to DNJ, any component of DOJ, or any other component of the federal government;
3. Whether the Whistleblower disclosed the criminal conduct before imminent threat of disclosure or government investigation;
4. The extent to which the Whistleblower is able to provide substantial assistance in the investigation and prosecution of individuals, companies, or entities equally or more culpable than the Whistleblower;
5. The Whistleblower's culpability relative to others;
6. Whether the Whistleblower has truthfully and completely disclosed all criminal conduct in which the Whistleblower has participated and of which the Whistleblower is aware;
7. The extent to which the Whistleblower occupies any official or leadership position or other position of public or private trust;
8. The adequacy of non-criminal sanctions, including, but not limited, to remedies imposed by civil regulators; and
9. Any aspect of the Whistleblower's criminal history.

### **Contact Information**

To self-disclose pursuant to this policy, please complete DNJ's Whistleblower Non-Prosecution Pilot Program Intake Form and email the completed form to [USANJ.WBP@usdoj.gov](mailto:USANJ.WBP@usdoj.gov) or have a representative or an attorney do so on your behalf.

### **Evaluation Process**

A Committee Co-Chaired by the Deputy United States Attorney and the Chief of the Criminal Division will evaluate disclosures received pursuant to this policy, in consultation with appropriate unit chiefs. Even if the Committee Chairs do not believe that the reporting individual satisfies the terms of the policy, they may conclude that the prospective individual should be considered for a non-prosecution agreement under the discretionary portion of the policy. In the event the Committee Chairs make an initial determination that a reporting individual appears to be eligible or should be considered under the discretionary portion of the policy, the reporting individual will be contacted.