

EDNY WHISTLEBLOWER NON-PROSECUTION PILOT PROGRAM

In circumstances where an individual becomes aware of criminal conduct before it is publicly reported or otherwise known to the Department of Justice, the individual may come to the U.S. Attorney's Office for the Eastern District of New York ("EDNY" or the "Office") and disclose that criminal conduct, enabling the government to investigate and hold wrongdoers accountable more quickly than would otherwise be the case. Effective immediately, EDNY will implement a pilot program (the "Whistleblower Pilot Program")¹ applicable to circumstances where an individual discloses to this Office information regarding the following crimes (hereinafter, the "covered crimes"): criminal conduct undertaken by two or more individuals, or by or through public or private entities or organizations, including corporations, partnerships, non-profits, exchanges, money services businesses, banks, financial institutions, investment advisers, or investment funds, involving (1) fraud or corporate control failures; (2) intellectual property theft and related violations; (3) market integrity; (4) state or local bribery or fraud relating to federal, state, or local funds; (5) obstruction of justice, perjury, or false statements; (6) healthcare fraud, including violations of the Anti-Kickback statute; and (7) money laundering related to any of the prior-listed crimes. With respect to the covered crimes, this Office will enter into a non-prosecution agreement with the individual where the following conditions are met:

1. The misconduct has not previously been made public and is not already known to the Department of Justice ("DOJ");
2. The individual discloses the criminal conduct voluntarily to EDNY and not in response to a government inquiry or obligation to report misconduct to EDNY or any other component of DOJ, and prior to imminent threat of disclosure or government investigation;
3. The individual provides substantial assistance in the investigation and prosecution of one or more equally or more culpable persons, and is prepared to cooperate fully with this Office in its investigation and prosecution of the disclosed conduct, including testifying in any proceeding in the Eastern District of New York or elsewhere as requested by the Office;

¹ The contents of this memorandum provide internal guidance to EDNY prosecutors on legal issues. Nothing in this policy 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 EDNY to determine whether an individual has satisfied each of the conditions necessary for the Office to enter into a non-prosecution agreement, and, where the Office has determined that any of those conditions are not met, it remains at all times in the sole discretion of the Office to determine whether to extend a non-prosecution agreement. This policy does not apply to any other United States Attorney's Office or any other litigating component of the Justice Department. This policy may not apply to individuals who provide information regarding violations subject to approval requirements by other DOJ components under rules, regulations, or procedures. In such cases, EDNY will consider the information and consult with any relevant other DOJ components to determine the application of this policy. This policy is distinct from the DOJ Criminal Division Corporate Whistleblower Awards Pilot Program which applies only to potential whistleblowers who did not meaningfully participate in criminal activity for conduct that falls within specified subject areas (details available [here](#)). Finally, this policy does not supersede any provision of the Justice Manual.

4. The individual provides complete, truthful, and accurate information, and discloses all criminal conduct in which the individual has participated and of which the individual is aware;
5. The individual is not an elected, or appointed and confirmed, federal, state, local or foreign official; a federal law enforcement official; the highest-ranking person within the organization where the misconduct occurred (e.g., the Chief Executive Officer) or the person who, regardless of title, exercises primary control over the operations of such organization; or the head of a public agency or entity;
6. The individual's role in the alleged misconduct did not involve: leading or originating the illegal activity; violence or the threat of violence; any federal or state sex offense involving fraud, force, coercion, or a minor; or any federal or state offense involving terrorism; and
7. The individual has not been previously convicted of any felony involving: violence or the threat of violence; any sex offense involving force, fraud, coercion, or a minor; terrorism; or fraud or dishonesty.

Factors in Favor of a Discretionary Non-Prosecution Agreement

Where an individual discloses information to this Office regarding the covered crimes but does not meet the requirements set forth above, prosecutors may nonetheless consider, with supervisory approval and consistent with the principles and any approval requirements set forth in the Justice Manual, exercising discretion to extend a non-prosecution agreement. 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 EDNY or to any component of the DOJ;
2. Whether the individual disclosed the criminal conduct voluntarily to EDNY and not in response to government inquiry or reporting obligation to EDNY or any component of DOJ, and prior to imminent threat of disclosure or government investigation;
3. The extent to which the individual is able to provide substantial assistance in the investigation and prosecution of one or more equally or more culpable persons and the individual's culpability relative to others;
4. Whether the individual has truthfully and completely disclosed all criminal conduct in which the individual has participated and of which the individual is aware;
5. Whether the individual is located outside the United States of America and is likely to remain outside of the United States of America;

6. Whether the individual has information about individual(s) or an entity or entities located outside the United States of America and could provide substantial assistance in the investigation and prosecution of such individual(s) or entity or entities;
7. Whether the individual has information about criminal conduct by a federal elected or appointed and confirmed official;
8. Whether the individual has information about criminal conduct by a senior officer and/or a member of the board of directors of a publicly traded company;
9. The extent to which the individual occupies any official or leadership position or other position of public or private trust;
10. The adequacy of non-criminal sanctions, including but not limited to remedies imposed by civil regulators; and
11. The individual's criminal history.

Notice of Forfeiture and Restitution Requirements

To receive a non-prosecution agreement under the Whistleblower Pilot Program, the reporting individual will be required to forfeit or disgorge any proceeds from the criminal wrongdoing and pay restitution to victims.

Contact Information

To self-disclose pursuant to the Whistleblower Pilot Program, please email a completed intake form ([available here](#)) to the following email address: USANYE-WBP@usdoj.gov.