

USAO-SDFL WHISTLEBLOWER PROGRAM¹

To encourage early voluntary self-disclosure of criminal conduct and to promote effective enforcement of federal criminal laws, the United States Attorney's Office for the Southern District of Florida ("USAO-SDFL") has implemented a whistleblower program applicable to circumstances where an individual discloses to this Office information regarding criminal conduct undertaken by or through: (a) public or private companies, exchanges, indexes, financial institutions, investment advisers, investment firms, or investment funds involving fraud or corporate control failures or affecting market integrity; or (b) criminal conduct involving state or local bribery or fraud relating to federal, state, or local funds.² Specifically, in such circumstances, the USAO-SDFL may enter into a non-prosecution agreement in exchange for the individual's cooperation where the following conditions are met:

1. The misconduct has not previously been made public and is not already known to the USAO-SDFL or any other state, local, or federal law enforcement agency;
2. The individual voluntarily discloses the criminal conduct to the USAO-SDFL and is not in response to a government inquiry or obligation to report misconduct to the USAO-SDFL or any other state, local, or federal law enforcement agency, and prior to imminent threat of disclosure or government investigation;
3. The individual is able to provide substantial assistance in the investigation and prosecution of one or more equally or more culpable persons, and is prepared to cooperate fully with the USAO-SDFL in its investigation and prosecution of the disclosed conduct;
4. The individual truthfully and completely discloses all criminal conduct in which the individual has participated and of which the individual is aware;
5. The individual is not a: (a) federal, state, or local elected or appointed and confirmed official; (b) official or agent of a federal investigative or federal law enforcement agency; or (c) the chief executive officer or equivalent or chief financial officer or equivalent of a public or private company; and
6. The individual has not engaged in any criminal conduct that involves the use of force or violence, any sex offense involving fraud, force, or coercion of a minor, or any offense involving terrorism or implicating national security or foreign affairs and does not have a previous felony conviction or a conviction of any kind for conduct involving fraud or dishonesty.

¹ This is a Pilot Program and the contents of this memorandum provide internal guidance to SDFL 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 the United States Attorney's Office to determine whether an individual has satisfied each of the conditions necessary for the USAO-SDFL to enter into a non-prosecution agreement in exchange for the individual's cooperation, and, where the USAO-SDFL has determined that any of those conditions are not met, it remains at all times in the sole discretion of the USAO-SDFL to determine whether to extend a non-prosecution agreement in exchange for the individual's cooperation. This policy does not apply to, or is enforceable against, any other United States Attorney's Office or any other litigating component of the Justice Department. Finally, this policy does not supersede any provision of the Justice Manual.

² This policy does not apply to individuals who provide 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, or bribery of federal officials.

Considerations for a Discretionary Non-Prosecution Agreement

Where an individual discloses information to the USAO-SDFL regarding criminal conduct undertaken by or through: (a) public or private companies, exchanges, indexes, financial institutions, investment advisers, investment firms, or investment funds involving fraud or corporate control failures or affecting market integrity; or (b) criminal conduct involving state or local bribery or fraud relating to federal, state, or local funds, but does not meet the requirements set forth above, SDFL prosecutors may nonetheless consider, with supervisory approval and consistent with the principles set forth in the Justice Manual and USAO-SDFL circulars, exercising discretion to extend a non-prosecution agreement in exchange for the individual's cooperation. In evaluating whether such an agreement would be in the public interest and necessary in a particular case, SDFL prosecutors and supervisors should consider, among other things, the following factors:

1. Whether and to what extent the criminal conduct has previously been made public or was previously known to the USAO-SDFL or to any other state, local, or federal law enforcement agency;
2. Whether the individual disclosed the criminal conduct voluntarily to the USAO-SDFL and not in response to a government inquiry or reporting obligation to USAO-SDFL or any other state, local, or federal law enforcement agency, 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 which the individual is aware;
5. The extent to which the individual occupies any official or leadership position or other position of public or private trust;
6. The adequacy of non-criminal sanctions, including but not limited to remedies imposed by civil regulators; and
7. The individual's criminal history.

Notice of Forfeiture Requirement

A reporting individual understands that to receive any non-prosecution agreement under the USAO-SDFL Whistleblower Program, an individual will be required to forfeit proceeds involved in the individual's criminal misconduct.

Evaluation Process

A Committee Co-Chaired by a member of the Executive Division and the Chief and Deputy Chief of the Criminal Division will evaluate disclosures received pursuant to this policy, in consultation with appropriate Section 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, you will be contacted.

CONTACT INFORMATION

To self-disclose pursuant to this policy, please complete the Intake form located here at **WBP Reporting Form** and email it to USAFLS.WhistleblowerProgram@usdoj.gov.