

# **SDTX WHISTLEBLOWER NON-PROSECUTION PILOT PROGRAM**

**Effective September 16, 2024**

To encourage early and voluntary disclosure of previously unknown criminal conduct and to identify and prosecute individuals most culpable for that misconduct, the United States Attorney's Office for the Southern District of Texas will implement a pilot program applicable to circumstances where an individual or business organization discloses to this Office 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.<sup>1</sup>

Specifically, in such circumstances, this Office will 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 Office, any component of the Department of Justice ("DOJ"), or another federal law enforcement agency;
2. The individual or organization discloses the criminal conduct voluntarily and not (a) in response to a government inquiry or obligation to report misconduct; (b) pursuant to an existing agreement to report misconduct to any federal law enforcement or regulatory agency; or (c) prior to imminent threat of disclosure;
3. The individual or organization 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 this Office in its investigation and prosecution of the disclosed conduct and recovery of any related criminal proceeds;
4. The individual or organization truthfully and completely discloses all criminal conduct in which the individual or organization has participated and of which the individual is aware;
5. The individual is not (a) a federal, state, or local elected or appointed official; (b) an official or agent of a federal investigative or federal law enforcement agency; (c) a person who otherwise is, or is expected to become, of major

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<sup>1</sup> This program is not connected with the Department of Justice's [Corporate Whistleblower Awards Pilot Program](#).

- public interest; (d) the highest-ranking person within the organization where the misconduct occurred (e.g., the chief executive officer or equivalent or chief financial officer or equivalent of a public or private company); or (e) the person who, regardless of title, exercises primary control over the operations of the organization where the misconduct occurred;
6. The individual's role in the alleged misconduct did not involve leading or originating the illegal activity, and 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 officials, and does not have a previous felony conviction or a conviction of any kind for conduct involving fraud or dishonesty; and
  7. The individual agrees to forfeit or disgorge any proceeds from the disclosed criminal wrongdoing and pay restitution to victims consistent with the individual's role in the offense.

This policy does not apply to individuals or organizations providing information regarding violations of the Foreign Corrupt Practices Act, 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.

#### *Considerations for a Discretionary Non-Prosecution Agreement*

Where an individual or business organization discloses information to this Office 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 concerning federal, state, or local bribery or fraud relating to federal, state, or local funds, 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 individual'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 SDTX or to any component of DOJ;
2. Whether the individual or organization disclosed the criminal conduct voluntarily to SDTX and not in response to government inquiry or reporting

obligation to SDTX or any component of DOJ, and prior to imminent threat of disclosure or government investigation;

3. The extent to which the individual or organization 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 or organization has truthfully and completely disclosed all criminal conduct in which the individual or organization has participated and of which the individual or organization 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 or organization's criminal history.

### **Notice of Forfeiture Requirement**

The reporting individual or organization understands that to receive any non-prosecution agreement under the SDTX Whistleblower Pilot Program, an individual or organization will be required to forfeit proceeds involved in the individual or organization's criminal misconduct.

### **Contact Information**

To self-disclose pursuant to this policy, complete our WBP Intake Form and email it to: [USATXS.WBP@usdoj.gov](mailto:USATXS.WBP@usdoj.gov).

### **Evaluation Process**

A Committee Co-Chaired by the First Assistant United States Attorney and the Chief of the Criminal Division will evaluate disclosures received pursuant to this policy, in consultation with appropriate section deputies or attorneys-in-charge. Even if the Committee Chairs do not believe the reporting individual satisfies the terms of the policy, they may conclude 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 individual will be contacted.

## **Note**

The contents of this memorandum provide internal guidance to SDTX 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 Office to enter into a non-prosecution agreement in exchange for the individual's cooperation, 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 in exchange for the individual's cooperation. This policy does not apply to 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.