

NDCA WHISTLEBLOWER PILOT PROGRAM¹

Effective March 14, 2024

To encourage early voluntary self-disclosure of criminal conduct and to promote effective enforcement of criminal laws, the United States Attorney's Office for the Northern District of California ("NDCA" or the "Office") will implement a pilot program applicable to circumstances where an individual discloses to this Office information regarding the following subjects (hereinafter, the "covered subjects"): (1) criminal conduct undertaken by or through public or private entities or organizations, including corporations, partnerships, non-profits, exchanges, financial institutions, investment advisers, or investment funds involving fraud or corporate control failures; intellectual property theft and related violations; or affecting market integrity, or (2) criminal conduct involving state or local bribery or fraud relating to federal, state, or local funds. 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 NDCA or to any component of the Department of Justice ("DOJ");
2. The individual discloses the criminal conduct voluntarily to NDCA and not in response to a government inquiry or obligation to report misconduct to NDCA or any 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, if necessary or appropriate, testifying under oath;
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 official or the head of a public agency or entity; (b) an 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

¹ The contents of this memorandum provide internal guidance to NDCA 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. 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, the NDCA will consider the information and consult with any relevant other DOJ components to determine the application of this policy. Finally, this policy does not supersede any provision of the Justice Manual.

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, or a minor; 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.

Considerations for a Discretionary Non-Prosecution Agreement

Where an individual discloses information to this Office regarding the covered subjects, 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 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 NDCA or to any component of the DOJ;
2. Whether the individual disclosed the criminal conduct voluntarily to NDCA and not in response to government inquiry or reporting obligation to NDCA 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. 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 NDCA Whistleblower Pilot Program, an individual will be required to forfeit proceeds involved in the individual's criminal misconduct.

Contact Information

To self-disclose pursuant to this policy, please email: USACAN.WBP@usdoj.gov

You may complete our WBP Intake Form to begin the process.

Please email the completed form to the above inbox.

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 and branch 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 submitting party will be contacted.