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Antitrust

How to Adjust Internal Reporting for the DOJ Antitrust Whistleblower Era

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When the DOJ Antitrust Division launched its first whistleblower reward program (AWB Program) in July 2025, it created a powerful incentive for employees and third parties to report potential antitrust crimes directly to the government.

The AWB Program marks a structural shift in where antitrust enforcement often starts, with cases now originating from employees as well as companies. As a result, compliance officers must adapt internal reporting and investigation systems to be timely, accurate, visible and trustworthy.

Because regulators will focus on timeliness when considering any benefits, companies need strong whistleblower programs to help them detect and address conduct early. Companies that delay reporting, ignore red flags or suppress internal tips may not only lose leniency or cooperation credit, but expose themselves to heightened enforcement risks and costs.

Thus, a robust compliance program is no longer just a shield, but essential to resolving a case. Companies that build a culture of ethical reporting and act quickly on reports will be better positioned in a first-to-report race. The era of whistleblower-forward enforcement is here. Compliance programs must not only keep up, but lead.

This article explains the mechanics of the AWB Program and how it interacts with other whistleblower reward programs, highlights how companies should reassess the structure and function of their internal reporting systems, and provides a framework for how companies should think about self-reporting possible antitrust issues because of the AWB Program.

See this two-part series on the DOJ's Corporate Whistleblower Awards Pilot Program: "A Look at Forfeiture and Culpability" (Aug. 14, 2024), and "Exclusions, NDAs and Goals" (Sep. 11, 2024).

Program Mechanics and Practical Risks for Compliance Programs

The Antitrust Division partnered with the United States Postal Service (USPS) to launch the program using USPS's unique statutory authority under 39 U.S.C. § 404(a)(7), which permits the agency to "offer and pay rewards for information and services in connection with violation of the postal laws." Together,

USPS, the Office of the Inspector General of USPS and the Antitrust Division issued a memorandum of understanding (Memo) which lays out how the AWB Program works in practice.

The existing USPS statute allowed the Antitrust Division to move forward without new legislation. This structure may serve as a test case for the Antitrust Division to expand the program by partnering with other federal agencies that possess similar statutory authority – broadening the reach of whistleblower incentives beyond procurement fraud and antitrust – or by asking Congress to expand the program.

Eligibility

To qualify for a reward under the AWB Program, a tip must be voluntary, original, and tied to monetary sanctions of at least $1 million, according to the Memo. Whistleblower reports may initially be made "anonymously through an attorney," and even employees who participated in misconduct can qualify unless they "coerced another party to participate in the illegal activity or were clearly the leader or originator of that activity," as the Memo notes.

Conflict With Antitrust Leniency Program

In 1978, the Antitrust Division introduced the Antitrust Leniency Program (substantially revised in 1993), which provides incentives for companies to self-report antitrust activity.

Most notably, for decades, the Antitrust Leniency Program has provided complete immunity to the first party – company or individual – to self-report cartel conduct and satisfy program requirements. If a company reports after the DOJ has already been contacted by the first report, leniency typically is unavailable. By design, the program creates "a race" with other "co-conspirators – including their own employees, who may seek individual leniency and have whistleblower protections if they report to the Division – to secure a marker."

This framework shaped what became known as the "broiler chicken" investigation. Tyson disclosed early in an SEC filing and received leniency credit, while Pilgrim's Pride pled guilty and paid $107 million. With the AWB Program creating a parallel path for reports to the Antitrust Division, companies must assume that the race to report tightens.

The table below summarizes how the Antitrust Division's Leniency Program and the AWB Program compare:

Criteria	Antitrust Division Leniency Program	AWB Program
Eligibility	Must be participant in criminal conduct for immunity	Anyone with nonpublic information
Benefit	Complete immunity from prosecution upon satisfying requirements	15–30% of fines collected over $1 million
First-In Timing Requirement	Yes, only first report qualifies for leniency	Yes, but can share award with other reports
Participation in Misconduct	Required in order to warrant complete immunity	Not required (and participation may not disqualify so long as the reporter did not coerce another party and was not the leader or originator of the criminal activity)
Confidentiality	Strict confidentiality subject to (1) the applicant has publicly disclosed its application; (2) the applicant agrees to the disclosure; (3) a court orders the disclosure; or (4) disclosure is required in a criminal case.	Can initially report anonymously through an attorney.

Reduced Use of Internal Channels

Strong internal reporting programs protect companies in detecting and resolving conduct potentially violating criminal laws or creating other exposure, before the issue can escalate. The reporter may conclude that the company has fully redressed the issue. As a result, the company can save millions of dollars in reputational harm, litigation and regulatory enforcement actions that may result if the misconduct is unabated.

The AWB Program, with the combination of initial anonymity and financial reward, makes DOJ reporting more attractive than internal hotlines, especially when internal processes appear slow, opaque or retaliatory. The Antitrust Leniency Program awards the greatest immunity protection to the company, its executives and its employees under what is called Type A Leniency, which is provided "before the Division has opened an investigation, provided the Division has not received information about the illegal activity from any other source and the other criteria for Type A Leniency are met." A whistleblower report can remove leniency as an option as it may allow the DOJ to commence and develop its investigation before the first call for a leniency marker.

Survey evidence underscores why the ability for employees to report externally matters. The EY Global Integrity Report 2024 found that more than half of employees doubted misconduct reported internally would be addressed, and nearly half expressed fear of retaliation. Those perceptions align directly with the DOJ's incentives: when workers lack trust in corporate systems, they now have a safe alternative with the prospect of financial reward.

The risks are concrete. In 2024, a company paid $42.5 million to resolve kickback allegations after a compliance officer, frustrated by inaction internally, escalated her concerns externally. This case highlights how unaddressed internal reports can quickly evolve into significant enforcement actions.

Taken together, these mechanics shift the reporting calculus. Unless internal systems are swift, transparent and trusted, companies may find themselves racing their own employees to the DOJ, or may find that an investigation has commenced against the company based on the employee's whistleblower report.

Overlapping Whistleblower Programs

The AWB Program is just one of many whistleblower programs U.S. federal authorities have introduced to encourage those with information about crimes to come forward. Those programs include the:

- SEC whistleblower program which has awarded "more than $2.2 billion to 444 individual whistleblowers" since 2011, according to its Annual Report to Congress for Fiscal Year 2024;
- Commodity Futures Trading Commission (CFTC) program which has awarded approximately $390 million and nearly $3.2 billion in enforcement sanctions since 2014, according to its 2024 Annual Report;
- Internal Revenue Service program awarding $1.3 billion after collecting $7.37 billion since 2007;

- Financial Crimes Enforcement Network program awarding 10-30% of collected monetary sanctions under the AML & Sanctions Whistleblower Program, with awards paid from Treasury's Financial Integrity Fund (up to $300 million);
- DOJ Criminal Division Corporate Whistleblower Awards Pilot Program (WAPP), launched in August 2024 and revised in May 2025; and
- False Claims Act (FCA), enacted in 1863, offering whistleblower rewards — known as *qui tam* actions — resulting in settlements and judgments of more than $78 billion since the statute was modified in 1986.

International Whistleblower Programs

Whistleblower reports are encouraged in other countries, as well.

South Korea's Fair Trade Commission (KFTC) operates an Informant Reward System for reporting cartels under the Monopoly Regulation and Fair Trade Act, in place since 2002 and recognized in KFTC publications.

The Directorate-General (DG) for Competition of the EU offers a whistleblower program. Additionally, the EU Whistleblower Directive (Directive (EU) 2019/1937) requires companies with 50 or more employees in EU Member States to implement secure internal reporting channels and to protect whistleblowers from retaliation.

The U.K. Competition and Markets Authority (CMA) offers whistleblower awards of up to £250,000 for reporting illegal cartel activity. The U.K. Director of the Serious Fraud Office has also supported financial rewards for whistleblowers.

See "Whistleblower Protection and Compliance: A Comparative Study of the United States and Japan" (Jul. 31, 2024).

An Increased Likelihood of External Reporting

The whistleblowing incentives provided by these programs strongly encourage external reporting. For example, a junior sales executive who uncovers bid-rigging and goes straight to the DOJ could later receive a significant share of any recovery.

The SEC's record $279-million whistleblower award in 2023 demonstrates the scale of potential payouts when insiders provide information that materially advances an investigation, which the SEC noted "not only incentivizes whistleblowers to come forward with accurate information . . ., but also reflects the tremendous success of our whistleblower program."

The WAPP attracted more than 250 tips within its first few months, many involving conduct previously unknown to the government, according to remarks from then-Deputy AG Marshall Miller in December 2024. This recent example illustrates the likelihood of employees choosing to bypass company channels.

Managing Interrelated Reporting Regimes

Companies should be prepared to analyze overlapping eligibility requirements when more than one whistleblower program may apply.

For example, public companies confronting potential misconduct could trigger securities issues with parallel antitrust implications and must carefully evaluate the timing and forum of any disclosure.

Additionally, companies with government contracts may face FCA exposure alongside antitrust enforcement. As one example, three companies pled guilty to a decade-long bid-rigging conspiracy involving U.S. military contracts resulting in $82 million in criminal fines and $154 million for antitrust and FCA violations following a whistleblower *qui tam* lawsuit.

See "2024 SEC and CFTC Whistleblower Reports Reflect Continuing Vitality of Programs" (Jan. 29, 2025).

Strengthening Internal Reporting Systems

The AWB Program underscores how vital it is for companies to restore employee trust in internal systems. The DOJ's Evaluation of Corporate Compliance Programs (ECCP) emphasizes that employees should know how their reports are assessed and resolved.

Build Trust

A 2023 action by the SEC illustrates the consequences of undermining reporting. The company was fined $35 million for using separation agreements that discouraged whistleblowers from contacting regulators, demonstrating how restrictive practices erode trust and attract enforcement.

Transparent communication – such as anonymized summaries of issues raised, outcomes and remediation steps – can convert employee skepticism into confidence that concerns will be addressed.

One effective approach is to publish periodic compliance updates that describe common themes from hotline reports, explain in general terms how they were addressed and highlight resulting improvements. Regular updates demonstrate that reporting is not futile, but leads to change.

See "Compliance Takeaways From Activision Blizzard's $35-Million SEC Resolution Regarding Whistleblower Protections and Workplace Misconduct" (Mar. 15, 2023).

Update Policies to Reflect the New Landscape

Companies should review codes of conduct, non-disclosure agreements and compliance manuals to ensure they unambiguously protect the right of employees to report misconduct. Even indirect language can deter whistleblowing and prompt regulatory action.

For example, the SEC sanctioned a company in 2022 after finding that employee agreements requiring workers to notify the company before responding to a government inquiry violated SEC Rule 21F-17(a), which exists to protect whistleblowers. The agency concluded that the provision impeded employees' ability to communicate with regulators and imposed a $400,000 penalty.

Streamline Internal Reporting and Response

Speed and consistency are essential as regulators focus on the timeliness of a company's self-report. ECCP identifies timely investigations and consistent enforcement as hallmarks of effective compliance. Companies should establish escalation protocols that guarantee prompt attention to credible allegations.

For instance, reports designated "urgent" could be routed to a compliance triage team within 24 hours for preliminary review and escalation.

The DOJ has credited companies that implemented such improvements. In a 2022 resolution, it entered into a deferred prosecution agreement resolving FCPA violations and noted that enhancements to the company's hotline, investigative protocols and case triage process were important remedial measures. These reforms influenced a resolution without criminal charges.

See "Stericycle Settlement Offers Clues on the Monaco Memo in Practice" (May 11, 2022).

Recognize and Reward Ethical Reporting

Finally, companies should foster cultures that value and reward ethical reporting. Recognizing employees who help prevent risk – through training, team meetings or performance evaluations – reinforces that compliance is a corporate priority.

The DOJ has explicitly acknowledged companies that integrate compliance into performance management. In 2024, the DOJ declined criminal prosecution in a case, citing voluntary self-disclosure, full cooperation and significant program enhancements. The DOJ took note that the company embedded compliance expectations into evaluations and reinforced a disclosure culture, which contributed to a favorable outcome.

Self-Reporting to Get Ahead of Whistleblowers

As noted, the Antitrust Leniency Program creates a race for disclosure, meaning companies need to be able to identify, assess and investigate possible antitrust issues quickly to decide about whether to self-report to the Antitrust Division before someone else does.

Start the Clock – and Triage Quickly

When determining the amount of a whistleblower award, the DOJ considers the timeliness of the report along with "timely cooperation and assistance by, for example, helping to explain complex transactions, interpreting key evidence, or identifying new and productive lines of inquiry."

Similarly, under the WAPP, companies may still qualify for a presumption of declination if they report within 120 days of receiving an internal submission, provided they meet the requirements of the DOJ Criminal Division's Corporate Enforcement and Voluntary Self-Disclosure Policy (CEP). Importantly, the DOJ has clarified that this safe harbor applies even if the whistleblower has already approached the government. This structure makes disciplined triage essential; companies should issue hold notices

immediately, begin a targeted document and email review, and prepare a short plan identifying which facts will be confirmed before the first outreach to DOJ.

Preserve Eligibility Across DOJ Regimes

Strategic disclosure also means keeping multiple enforcement pathways open. For cartel conduct, the Antitrust Leniency Program still operates on a "first-in" basis, granting immunity only to the earliest qualifying applicant. For matters overseen by the Criminal Division, the CEP provides a presumption of declination for timely self-disclosures. And for cases led by U.S. Attorneys' Offices, nationwide voluntary self-disclosure policies lay out how local prosecutors will credit prompt, good-faith reporting.

See "Government Enforcers Explain Their Approach to Whistleblowers and VSD" (Jul. 17, 2024).

Make the First Outreach Count

In our experience, the initial report with the DOJ should provide an update on the investigation but also explain what remediation is underway. The ECCP highlights the key factors for review: detection, escalation, resources, discipline and remediation. That means disclosing the primary facts uncovered to date, identifying core custodians and data sources, committing to preserve relevant evidence and previewing remediation steps such as suspending implicated third parties or reinforcing financial controls.

Reap the Rewards of Moving First

Recent enforcement actions illustrate the value of timely disclosure. The DOJ maintains a roster of declinations under the Corporate Enforcement Policy, each reflecting a decision not to prosecute because the company self-reported, cooperated and remediated. Under the Antitrust Leniency Program, the Antitrust Division expects that "[a]n organization should seek a leniency marker at the first sign of potential wrongdoing even if it is not certain that the wrongdoing occurred."

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