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Department of Justice Creates First-of-Its-Kind Whistleblower Program

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July 30, 2025

On July 8, 2025, the U.S. Department of Justice (DOJ), the U.S. Postal Service (USPS) and the USPS Office of Inspector General (USPS OIG) entered into a memorandum of understanding (MOU) creating a whistleblower rewards program "to enable whistleblowers to report specific, credible and timely information about possible federal criminal violations." The first of its kind, it creates a monetary incentive for whistleblowers to report criminal antitrust violations involving such conduct as price fixing, bid rigging, market allocation and even certain types of predatory conduct by monopolists. The program supplements the DOJ Antitrust Leniency Policy and the Antitrust Criminal Penalty Enhancement and Reform Act (ACPERA). While those other programs offer the prospect of amnesty and limited civil liability for certain corporations and persons who have engaged in anticompetitive conduct, the whistleblower rewards program is designed to encourage *anyone* with information about antitrust violations to report them—and perhaps get paid in the process.

Because the whistleblower rewards program is based in 39 U.S.C. Section 404(a)(7), which governs the postal service, the MOU provides that reported violations must "affect the postal service, its revenues or property" to qualify for a whistleblower reward but "need not be material or otherwise pose any substantial detriment" to the USPS. Further, the whistleblower must "voluntarily" provide "original information" in a "timely" manner. The information must be "specific" and "credible," must be derived from "independent knowledge" (i.e., not from publicly available sources) and must "not already be known to the Antitrust Division or the USPS." It also must "result in a criminal conviction and fine of at least $1 million, or an equivalent recovery from a deferred prosecution or nonprosecution agreement." Qualifying criminal violations include those intended to "effectuate, facilitate or conceal violations of the Sherman Act" and those "targeting or affecting the conduct of federal competition investigations or proceedings."

Awards have the potential to be significant. Whistleblowers with qualifying information are eligible to receive at least 15%—and up to 30%—of the recovered criminal fine, depending on various factors such as the whistleblower's role in a successful prosecution, whether the whistleblower's report allowed the government to conserve resources and the extent of the whistleblower's cooperation. In 2025, criminal fines for Sherman Act violations can reach $100 million for corporations and other organizations and $1 million for individuals, or alternatively twice the conspirators' gains from the illegal activity or twice the victims' losses if either exceeds $100 million. In short, the program's incentives are significant.

There are several takeaways from the new whistleblower rewards program:

- In its current form, the program is limited in scope to conduct that affects the U.S. Postal Service, its revenues or its property. However, there is no materiality or substantiality requirement and the postal service's broad business touches nearly every industry. Therefore, it is improbable that this requirement will meaningfully impede recovery.
- The program is one of several designed to encourage voluntary reporting of anticompetitive conduct to the DOJ. Others include the DOJ's Antitrust Leniency Policy and ACPERA. The leniency policy allows for nonprosecution protection to individuals or companies that self-report criminal antitrust violations—provided they are first to do so and meet specific criteria, similar to those required under the whistleblower program. ACPERA also requires early self-reporting but allows qualifying parties to limit their civil liability to actual damages rather than treble damages. However, both programs involve self-disclosure that could expose the reporter to legal risks. In contrast, the whistleblower program can be used by individuals who were not involved in the misconduct and, instead of offering limited liability, provides financial rewards—making its incentives potentially more compelling.
- The whistleblower rewards program is designed to complement the DOJ's leniency policy and enhance its overall effectiveness. All three programs—the leniency policy, ACPERA and the whistleblower program—require timely reporting. Applicants who are not the first to report may fail to qualify for leniency,

reduced damages or a whistleblower award, respectively. The whistleblower rewards program may have the conciliatory effect of encouraging even faster reporting because of its cash reward.

- The 2020 Criminal Antitrust Anti-Retaliation Act (CAARA) was passed by Congress to protect employees who report antitrust violations. CAARA covers whistleblowing under the whistleblower rewards program, and organizations that fail to adequately protect whistleblowers may face liability for adverse employment actions against the whistleblower.

Now is a good time for companies to revisit their antitrust compliance programs and consider how they can be updated to ensure the timely identification, voluntary reporting and remediation of anticompetitive conduct. With the DOJ intensifying its efforts to pursue new antitrust cases and offering handsome whistleblower rewards, a robust, updated and effective compliance program is a sound investment more than ever. Stay tuned.

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05.08.25.17.28