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Antitrust Alert

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DOJ Antitrust Division announces whistleblower rewards program

By Gordon L. Lang and Brian Whittaker

The DOJ Antitrust Division launches a whistleblower rewards program, offering up to 30% of fines for reporting criminal antitrust violations affecting the Postal Service.



What's the impact?

- The program provides a potentially powerful financial incentive for individuals to report criminal antitrust and related federal criminal violations by their employers and others.
- For companies and their employees, compliance with federal criminal antitrust and related crimes remains paramount.

The United States Department of Justice's Antitrust Division announced a potentially far-reaching [whistleblower rewards program](#), which would, at the Antitrust Division's discretion, provide for monetary awards to individuals who report criminal antitrust and certain other criminal violations and lead to a criminal fine of least \$1 million. The program, set forth in a [Memorandum of Understanding](#) (MOU) between the Antitrust Division, the US Postal Service, and the Postal Service's Office of Inspector General (USPIS) applies to covered criminal violations

which USPIS “determines reasonably articulates a violation of law affecting the Postal Service, its revenues, or property.”

The press release and MOU do not specify what constitutes “affecting the Postal Service, its revenues, or property.” According to the MOU, although the Postal Service must suffer an “identifiable harm” from the violation reported, “the harm need not be material or otherwise pose any substantial detriment” to it. In its press release, the Antitrust Division states that the program will apply “across industries from healthcare to agriculture.” But whether the Antitrust Division and the Postal Service will take the position that any use of the mail in connection or furtherance of a covered violation is sufficient, or take a narrower view, is not yet known.

Key aspects of the whistleblower rewards program

Other key points include:

- / Only individuals are eligible for a reward. Under the MOU, although an individual apparently may be a participant in the criminal violation, the individual must not “have coerced another party to participate in the illegal activity” or “clearly” been the “leader or originator of the activity.” Furthermore, the whistleblower must provide information “[n]ot already known” to the Antitrust Division, USPIS, or the Postal Services Office of Inspector General.
- / The crimes covered by the program are *not* limited to criminal antitrust violations of the Sherman Act, 15 U.S.C. §§ 1-3. Under the MOU, covered crimes also include, among others, federal criminal violations committed to effectuate, facilitate, or conceal criminal Sherman Act violations, or federal crimes targeting or affecting federal, state, or local public procurement.
- / The program incentivizes the Postal Service, not just potential whistleblowers. Per the MOU, when a whistleblower report results in a fine of at least \$1 million (or the equivalent under a deferred prosecution or non-prosecution agreement), the Postal Service will collect a portion of the fine.

Prioritize antitrust compliance

By providing whistleblowers the possibility of recovering up to 30% of criminal fines (which for federal antitrust violations often are in the multi-millions of dollars or more), the new whistleblower program provides a potentially powerful financial incentive for individuals to report criminal antitrust violations by their employers and others. For companies and their employees, compliance with federal criminal antitrust and related crimes remains paramount.

Please contact us if you would like to discuss the whistleblower program or other antitrust matters.

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