



## Evelyn Sheehan to *Anti-Corruption Report*: U.S. DOJ Compensation Claw Back Program Improperly Shifts Government Burden to Employers

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The U.S. Department of Justice's (DOJ) new pilot program incentivizing companies under investigation to claw back compensation from culpable employees and supervisors attempts to shift the burden of corporate wrongdoing from shareholders to those directly responsible. However, as Kobre & Kim's Evelyn Sheehan – who focuses on asset forfeiture and other government enforcement actions – told *Anti-Corruption Report*, the program offloads the government's burden onto companies and adds to the challenges they face.

The three-year program, effective March 15, 2023, provides companies with a fine reduction if they try to recoup compensation from employees who engaged in wrongdoing in connection with the conduct under investigation, or others who had supervisory authority over the employee and knew of, or were willfully blind to, the misconduct.

"Although the DOJ's new Pilot Program is a well-intentioned attempt to shift financial penalties away from shareholders, it requires companies to retroactively claw back executives' assets without sufficient due process (particularly when enforced retroactively)," Ms. Sheehan explained. "This undermines well-established asset forfeiture jurisprudence that requires the government to prove both criminality and a nexus between that criminality and executives' assets before depriving individuals of their assets."

The program also increases the burden on companies. "The Program essentially offloads the government's enforcement burden onto employers without a sufficient showing of any actual ties between the alleged misconduct and executives' pay and without any access to appeal a company's decision," Ms. Sheehan argues. "In addition, by shifting enforcement onto employers, the Program exacerbates conflict of interest challenges among companies, their corporate counsel, and their executives," she adds.

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