

## DOJ Announces New Voluntary Self-Disclosure Policy

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On February 22, 2023, the Department of Justice (DOJ) announced a nationwide Voluntary Self-Disclosure Policy (VSD Policy), which goes into effect immediately and which is meant to strongly encourage self-disclosures. The policy comes a few months after Deputy Attorney General Lisa O. Monaco called for every DOJ component that prosecutes corporate crime to have a formal, documented program and policy that incentivizes voluntary self-disclosure. Our coverage of that announcement can be found [here](#).

As set forth in the new VSD Policy: “In determining the appropriate form and substance of a criminal resolution for any company, prosecutors should consider whether the criminal conduct at issue came to light as a result of the company’s timely, voluntary self-disclosure and credit such disclosure appropriately.”<sup>1</sup>

For the purposes of the new VSD Policy:

- **Voluntary** means there was no preexisting obligation to disclose, such as a regulatory obligation, contractual requirement, or a prior DOJ resolution.
- **Timely** means that the company made the disclosure to the relevant U.S. Attorney’s Office (USAO) “(a) prior to an imminent threat of disclosure or government investigation, (b) prior to the misconduct being publicly discussed or otherwise known to the government, and (c) within a reasonably prompt time after the company becoming aware of the misconduct, with the burden being on the company to demonstrate timeliness.”

- “The disclosure must contain **all relevant facts** concerning the misconduct that are known to the company at the time of the disclosure.”<sup>2</sup>

Importantly, the VSD Policy does not apply to *qui tam* actions or similar situations where a whistleblower reports misconduct directly to the DOJ. Moreover, a company that voluntarily self-discloses, fully cooperates, and appropriately remediates the criminal conduct—absent any aggravating factors—will receive significant benefits. The USAO:

- Will not seek a guilty plea;
- Will not impose a criminal penalty greater than 50 percent of the low end of the United States Sentencing Guidelines fine range, and may choose to forego a fine completely; and
- Will not seek to impose an independent compliance monitor for those companies that have tested and implemented an effective compliance program.<sup>3</sup>

Certain aggravating factors that may warrant the USAO’s seeking a guilty plea include misconduct that (a) poses a grave threat to national security, public health, or the environment; (b) is deeply pervasive throughout the company; or (c) involves current executive management of the company. Importantly, these factors do not necessitate a guilty plea, and the USAO will assess the totality of the facts and circumstances before determining the appropriate resolution. However, even where a guilty plea is sought following a voluntary self-disclosure, the USAO:

<sup>1</sup> See United States Attorneys’ Offices Voluntary Self-Disclosure Policy at page 2 (Feb. 22, 2023) (citing Memorandum from Deputy Attorney General Lisa Monaco, “Further Revisions to Corporate Criminal Enforcement Policies Following Discussion with Corporate Crime Advisory Group,” Sept. 15, 2022), <https://www.justice.gov/usao-sdny/press-release/file/1569411/download>.

<sup>2</sup> *Id.* at 3–4.

<sup>3</sup> *Id.* at 4.

- Will recommend a reduction of at least a 50 percent and up to 75 percent off the low end of the United States Sentencing Guidelines fine range, and
- Will not seek to impose an independent compliance monitor for those companies that have tested and implemented an effective compliance program.

Of course, the decision whether to self-report is case-specific and must be carefully considered by experienced counsel in light of this new guidance, though it is fair to say more companies will be incentivized to self-report as a result.

The full text of the new policy can be read [here](#).

## Contacts

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