



# Department of Justice

Updated March 7, 2024  
[www.justice.gov](http://www.justice.gov)

NSD  
(202) 514-2007

## NSD ENFORCEMENT POLICY FOR BUSINESS ORGANIZATIONS<sup>1</sup>

### **Introduction**

The mission of the National Security Division (NSD) of the Department of Justice is to carry out the Department's highest priority: to protect and defend the United States against the full range of national security threats, consistent with the rule of law. Business organizations and their employees are at the forefront of NSD's efforts to protect the national security of the United States by preventing the unlawful export of sensitive commodities, technologies, and services, as well as unlawful transactions with sanctioned countries and designated individuals and entities. Enforcing our export control and sanctions laws, and holding accountable those who violate them, is a top priority for NSD.

As the gatekeepers of U.S. export-controlled technologies and integral actors in the U.S. financial system, business organizations play a vital role in protecting our national security. NSD strongly encourages companies to voluntarily self-disclose directly to NSD all potentially criminal (*i.e.*, willful<sup>2</sup>) violations of the U.S. government's primary export control and sanctions regimes—the Arms Export Control Act (AECA), 22 U.S.C. § 2778, the Export Control Reform Act (ECRA), 50 U.S.C. § 4819, and the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. § 1705—as well as potential violations of other criminal statutes that affect national security because they arise out of or relate to the enforcement of export control and sanctions laws, such as money laundering, bank fraud, smuggling, fraudulent importation, and false statement offenses. *See* Justice Manual § 9-90.020(A)(2).

Violations of U.S. export control and sanctions laws harm our national security or have the potential to cause such harm, and this threat to national security informs how NSD arrives at an

---

<sup>1</sup> This Enforcement Policy supersedes the Department's "NSD Enforcement Policy for Business Organizations," dated March 1, 2023. This Enforcement Policy does not create any privileges, benefits, or rights, substantive or procedural, enforceable by any individual, organization, party, or witness in any administrative, civil, or criminal matter.

<sup>2</sup> In export control and sanctions cases, NSD uses the definition of willfulness set forth in *Bryan v. United States*, 524 U.S. 184 (1998). Under *Bryan*, an act is willful if done with the knowledge that it is illegal. The government, however, is not required to show the defendant was aware of the specific law, rule, or regulation that its conduct may have violated.

appropriate resolution with a business organization that violates such laws and distinguishes these cases from other types of corporate wrongdoing. Federal prosecutors must balance the goal of encouraging voluntary self-disclosures and cooperation against the goal of deterring these very serious offenses.

This Enforcement Policy sets forth the criteria that NSD, in partnership with U.S. Attorneys' Offices and other Department litigating components, uses in determining an appropriate resolution for organizations that make a voluntary self-disclosure in export control and sanctions matters. This Enforcement Policy further explains the criteria NSD uses in determining when an acquiring company that makes a voluntary self-disclosure of criminal conduct by an acquired entity can qualify for the additional protections of the Mergers and Acquisitions Policy (M&A Policy). Prosecutors will weigh and appropriately credit all timely voluntary self-disclosures on a case-by-case basis pursuant to this Enforcement Policy and applicable Department guidance.

While the activities of business organizations and their employees have the greatest potential to implicate our national security interests in the enforcement of export control and sanctions laws, NSD recognizes that the conduct of business organizations can also violate other U.S. national security laws, including the Foreign Agents Registration Act (FARA), laws prohibiting material support to and financing of terrorists, and criminal violations in connection with the work of the Committee on Foreign Investment in the United States (CFIUS), the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Team Telecom), and other national security proceedings. Thus, although this Enforcement Policy applies directly only to self-disclosures of potential criminal violations arising out of or relating to the enforcement of export control and sanctions laws, the principles of this Enforcement Policy shall inform all other corporate criminal matters handled by NSD. Companies are encouraged to voluntarily self-disclose to NSD any potential criminal violations of U.S. law relating to matters conducted, handled, or supervised by the Assistant Attorney General for National Security (U.S. national security laws). *See* 28 C.F.R. § 0.72; Justice Manual §§ 9-2.136–9-2.138, 9-90.000 *et seq.*

All voluntary self-disclosures relating to potential criminal violations of U.S. national security laws should be emailed to NSD's Chief Counsel for Corporate Enforcement at the following address: [NSD.VSD@usdoj.gov](mailto:NSD.VSD@usdoj.gov)

### **Benefits of the Enforcement Policy**

With the above goals in mind, this Enforcement Policy provides that when a company (1) **voluntarily self-discloses to NSD potentially criminal violations arising out of or relating to the enforcement of export control or sanctions laws** (2) **fully cooperates**, and (3) **timely and appropriately remediates**, absent aggravating factors and consistent with the definitions below, NSD generally will not seek a guilty plea, and there is a presumption that the company will receive a non-prosecution agreement and will not pay a fine. Aggravating factors, as described below,

include conduct that involves a grave threat to national security;<sup>3</sup> exports of items that are particularly sensitive or to end users that are of heightened concern; repeated violations; involvement of senior management; and significant profit. In cases where the principles of federal prosecution so warrant,<sup>4</sup> NSD has the discretion to issue a declination.

Companies that qualify for a non-prosecution agreement or declination, where appropriate, will not be permitted to retain any of the unlawfully obtained gains from the misconduct at issue. Companies will be required to pay all disgorgement, forfeiture, and/or restitution resulting from the misconduct at issue. Where another authority collects disgorgement, forfeiture, and/or restitution, the Department will apply, in appropriate circumstances, its policy on coordination of corporate resolution penalties, Justice Manual § 1-12.100. In addition, NSD generally will not require the imposition of an independent compliance monitor for a cooperating company that is determined to have met the requirements of this Enforcement Policy and, at the time of resolution, demonstrates it has implemented and tested an effective compliance program.

If, due to aggravating factors, such as those described below, a different criminal resolution—*i.e.*, a deferred prosecution agreement or guilty plea—is warranted for a company that has voluntarily self-disclosed to NSD, fully cooperated, and timely and appropriately remediated, NSD:

- Will accord, or recommend to a sentencing court, a fine that is, at least, 50% less than the amount that otherwise would be available under the alternative fine provision, 18 U.S.C. § 3571(d). In other words, NSD will seek a fine capped at an amount equal to the gross gain or gross loss;<sup>5</sup>

---

<sup>3</sup> By their nature, willful violations of sanctions, export controls, and other laws within the purview of the National Security Division often pose serious risks to national security. Such risks will need to be weighed accordingly in determining whether or not to seek a guilty plea, consistent with Deputy Attorney General’s September 2022 Memorandum. *See* Memorandum from Deputy Attorney General Lisa O. Monaco, “Further Revisions to Corporate Criminal Enforcement Policies Following Discussion with Corporate Crime Advisory Group,” Sept. 15, 2022 (“September 2022 DAG Memo”).

<sup>4</sup> *See* Justice Manual § 9-27.000. As a general matter, such circumstances include the nature and seriousness of the offense, law enforcement priorities, and the criminal history of the offender.

<sup>5</sup> The Fine Guidelines for corporate defendants, covered in the U.S. Sentencing Guidelines (U.S.S.G.) §§ 8C2.1 - 8C2.9, do not apply to charges for export control and sanctions violations. *See* U.S.S.G. § 8C2.1. Instead U.S.S.G. § 8C2.10 directs that the fine be determined pursuant to “the general statutory provisions governing sentencing.” *See* U.S.S.G. § 8C2.10 cmt. background. Prosecutors in these matters rely on the alternative fine provision in 18 U.S.C. § 3571(d) and on forfeiture. Under 18 U.S.C. § 3571(d), the fine would ordinarily be capped at an amount equal to twice the gross gain or gross loss. In addition, the State Department’s Directorate of Defense Trade Controls (DDTC), the Commerce Department’s Bureau of Industry and Security (BIS), and the Treasury Department’s Office of Foreign Assets Control (OFAC) commonly impose administrative fines for export control and sanctions violations. Consistent with Department policy, federal prosecutors will endeavor to coordinate with and, in appropriate circumstances, will consider the amount of fines, penalties, and/or forfeiture paid to other federal, state, local, or foreign enforcement authorities that are seeking to resolve a case with a company for the same misconduct. *See* Justice Manual § 1.12.100.

- Will recommend full satisfaction of forfeiture obligations through payment of forfeiture in an amount no greater than that representing the value of proceeds received by the company, including in cases where an underlying forfeiture money judgment would include amounts exceeding such proceeds;
- In assessing the appropriate form of the resolution, will generally not require a corporate guilty plea absent the presence of particularly egregious or multiple aggravating factors;
- Will generally not require appointment of a monitor if a company has, at the time of resolution, demonstrated that it has implemented and tested an effective and well-designed compliance program and has taken appropriate steps to remediate the root cause of the misconduct.<sup>6</sup>

Nothing in this Enforcement Policy affects NSD’s ability to prosecute individuals.

## **Definitions**

For purposes of this Enforcement Policy, the following definitions apply:

### **1. Voluntary Self-Disclosure**

In evaluating self-disclosure, NSD will make a careful assessment of the circumstances of the disclosure, including the extent to which the disclosure permitted NSD to preserve and obtain evidence as part of its investigation. NSD encourages self-disclosure of potential wrongdoing at the earliest possible time, even when a company has not yet completed an internal investigation, if it chooses to conduct one. NSD will require the following for a company to receive credit for voluntary self-disclosure of wrongdoing:

- The voluntary disclosure must be to NSD;<sup>7</sup>
- The company has no preexisting obligation to disclose misconduct to any Department component, or federal or state regulator, or foreign regulatory or law enforcement entity;
- The company discloses the conduct to NSD “prior to an imminent threat of disclosure or government investigation,” U.S.S.G. § 8C2.5(g)(1);<sup>8</sup>

---

<sup>6</sup> Decisions about the imposition of a monitor will be made on a case-by-case basis and at the sole discretion of the Department, consistent with the September 2022 DAG Memo.

<sup>7</sup> Under this Enforcement Policy, a voluntary self-disclosure must be made to NSD. Disclosures made only to regulatory agencies, such as DDTC, BIS, or OFAC (*i.e.*, not to NSD) will not qualify under this Enforcement Policy. However, NSD will apply the provisions of this Enforcement Policy where a company made a good faith disclosure to another office or component of the Department of Justice and the matter is partnered with or transferred to, and resolved with, NSD.

<sup>8</sup> If a company makes a disclosure before it becomes aware of an ongoing nonpublic government investigation, the company will be considered to have made a voluntary self-disclosure.

- The company discloses the conduct to NSD “within a reasonably prompt time after becoming aware” of the potential violation, U.S.S.G. § 8C2.5(g)(1), with the burden on the company to demonstrate timeliness; and
- The company discloses all relevant non-privileged facts known to it at the time of the disclosure, including all relevant facts and evidence about all individuals involved in or responsible for the misconduct at issue, including individuals inside and outside of the company regardless of their position.<sup>9</sup>

## 2. Full Cooperation

In addition to the provisions contained in the Principles of Federal Prosecution of Business Organizations, *see* Justice Manual § 9-28.000, the following actions will be required for a company to receive credit for full cooperation for purposes of this Enforcement Policy:

- Timely disclosure of all non-privileged facts<sup>10</sup> relevant to the wrongdoing at issue, including:
  - All relevant facts gathered during a company’s internal investigation, if the company conducts one;
  - Attribution of facts to specific sources where such attribution does not violate the attorney-client privilege, rather than a general narrative of the facts;
  - Timely updates on a company’s internal investigation, if the company chooses to do one, including but not limited to rolling disclosures of information;
  - Identification of all individuals involved in or responsible for the misconduct at issue, regardless of their position, status, or seniority, including the company’s officers, employees, customers, competitors, or agents and third parties, and all non-privileged information relating to the misconduct and involvement by those individuals.
- Proactive cooperation, rather than reactive; that is, the company must timely disclose all facts that are relevant to the investigation, even when not specifically asked to do so, and where the company is or should be aware of opportunities for NSD to obtain relevant evidence not in the company’s possession and not otherwise known to the NSD, it must identify those opportunities to NSD;

---

<sup>9</sup> NSD recognizes that a company may not be in a position to know all relevant facts at the time of a voluntary self-disclosure, especially where only preliminary investigative efforts have been possible. In such circumstances, a company should make clear that it is making its disclosure based upon a preliminary investigation or assessment of information, but it should nonetheless provide a fulsome disclosure of the relevant facts known to it at that time.

<sup>10</sup> As set forth in Justice Manual § 9-28.720, eligibility for cooperation credit is not predicated upon the waiver of the attorney-client privilege or work product protection. Nothing herein alters the Justice Manual policy, which remains in full force and effect.

- Timely voluntary preservation, collection, authentication, and disclosure of relevant documents and information relating to their provenance, including (a) disclosure of overseas documents, the locations in which such documents were found, and the identities of their custodians and the individuals who authored and located the documents, (b) facilitation of third-party production of documents, and (c) where requested and appropriate, provision of translations of relevant documents in foreign languages;
  - Note: When a company claims that disclosure of overseas documents is prohibited due to data privacy, blocking statutes, or other reasons related to foreign law, the company bears the burden of establishing the existence of such a prohibition or restriction, demonstrating that the data does not exist on U.S. servers or systems, and identifying reasonable and legal alternatives to help NSD preserve and obtain the necessary facts, documents, and evidence for its investigations and prosecutions.
  - Note: Authentication of records sufficient to satisfy Rule 902 (and, where applicable, the subprovisions of Rule 803) of the Federal Rules of Evidence, pertaining to self-authentication of various categories of records, must be provided concurrently with the disclosure of relevant documents barring a concrete and specific explanation by the company as to why relevant certifications or attestations are unavailable as to specific records. Disclosure of documents while purporting to retain rights to object to their future admissibility is insufficient to merit consideration as cooperation under this Enforcement Policy.
- When requested and appropriate, de-confliction of witness interviews and other investigative steps that a company intends to take as part of its internal investigation to prevent the company's investigation from conflicting or interfering with NSD's investigation;<sup>11</sup> and
- When requested, and subject to the individuals' Fifth Amendment rights, making company officers and employees who possess relevant information available for interviews, including, where appropriate and possible, officers, employees, and agents located overseas as well as former officers and employees, and, where possible, facilitating interviews of third parties.

Furthermore, not all companies will satisfy all the components of full cooperation, whether because they decide to cooperate only later in an investigation or they timely decide to cooperate but fail to meet all of the criteria listed above. In general, such companies should be eligible for some cooperation credit if they provide all relevant non-privileged information related to individual accountability, but the benefits generally will be markedly less than for full cooperation as defined in this Enforcement Policy, depending on the extent to which the cooperation is lacking.

---

<sup>11</sup> Although NSD may, where appropriate, request that a company refrain from taking a specific action for a limited period of time for de-confliction purposes, NSD will not take any steps to affirmatively direct a company's internal investigation efforts.

### 3. Timely and Appropriate Remediation

The following will be required for a company to receive full credit for timely and appropriate remediation under this Enforcement Policy:<sup>12</sup>

- Demonstration of thorough analysis of causes of underlying conduct (i.e., a root cause analysis) and, where appropriate, remediation to address the root causes;
- Implementation of an effective compliance and ethics program that is sufficiently resourced; while the program may vary based on the size and resources of the organization, the evaluation will be based on:
  - The company's commitment to instilling corporate values that promote compliance, including awareness among employees that any criminal conduct, including the conduct underlying the investigation, will not be tolerated;
  - The resources the company has dedicated to compliance;
  - The quality and experience of the personnel involved in compliance, such that they can understand and identify the transactions and activities that pose a potential risk;
  - The authority and independence of the compliance function, including the access the compliance function has to senior leadership and governance bodies and the availability of compliance expertise to the board;
  - The effectiveness of the company's risk assessment and the manner in which the company's compliance program has been tailored based on that risk assessment;
  - The reporting structure of any compliance personnel employed or contracted by the company;
  - The compensation and promotion of the personnel involved in compliance, and those who may be involved in violations of internal compliance policies, in view of their role, responsibilities, performance, and other appropriate factors; and
  - The testing of the compliance program to assure its effectiveness.
- Appropriate discipline, including compensation clawbacks, for employees, including those identified by the company as responsible for the misconduct, either through direct participation or failure in oversight, as well as those with supervisory authority over the area in which the criminal conduct occurred;

---

<sup>12</sup> NSD will also coordinate with the appropriate regulatory agency in assessing a corporation's remediation efforts and compliance program.

- Appropriate retention of business records, and prohibition of the improper destruction or deletion of business records, including implementing appropriate guidance and controls on the use of personal communications and ephemeral messaging platforms that undermine the company’s ability to appropriately retain business records or communications or otherwise comply with the company’s document retention policies or legal obligations; and
- Any additional steps that demonstrate recognition of the seriousness of the company’s misconduct, acceptance of responsibility for it, and the implementation of measures to reduce the risk of repetition of such misconduct, including measures to identify future risks.

### **Potential Aggravating Factors**

The following are examples of aggravating factors that represent elevated threats to national security and that, if present to a substantial degree, could result in a more stringent resolution for an organization that has engaged in criminal violations arising out of or relating to the enforcement of export control or sanctions laws:

- Egregiousness or pervasiveness of criminal misconduct within the company;
- Concealment or involvement by upper management in the criminal conduct;
- Repeated violations of U.S. national security laws, including past administrative or criminal violations;
- A significant profit to the company from the misconduct<sup>13</sup>;
- Sanctions or export offenses that are actively concealed by other serious criminal activity such as fraud, or corruption;
- Unlawful transactions or exports involving a Foreign Terrorist Organization or Specially Designated Global Terrorist;
- Exports of items controlled for nuclear nonproliferation or missile technology reasons to a proliferator country; items known to be used in the construction of weapons of mass destruction; or military items to a hostile foreign power.

Although a company will not qualify for a *presumption* of a non-prosecution agreement if aggravating circumstances are present, prosecutors may nonetheless determine that a non-prosecution agreement is an appropriate outcome after assessing the severity and prevalence of the aggravating circumstances and the level and degree of the company’s cooperation.

---

<sup>13</sup> “Significant profit” means significant proportionally relative to the company’s overall profits.



## **Voluntary Self-Disclosures in Connection with Acquisitions: The M&A Policy**<sup>14</sup>

When a company undertakes a lawful, bona fide acquisition of another company and, through due diligence conducted either shortly before or shortly after the transaction, becomes aware of potential criminal violations of export control, sanctions, or other laws affecting U.S. national security<sup>15</sup> by the acquired company, the acquiror may qualify for the additional protections of the M&A Policy by making a voluntary self-disclosure to NSD subject to the requirements of the M&A Policy and consistent with the definitions below.

### **Requirements of the M&A Policy**

Subject to the exceptions below, an acquiring company will qualify for the additional protections of the M&A Policy if it:

- Completes a lawful, bona fide acquisition of another company;
- Voluntarily and timely self-discloses to NSD potentially criminal violations of laws affecting U.S. national security committed by the acquired entity;
- Fully cooperates with NSD's investigation; and
- Timely and appropriately remediates the misconduct.

The presence of aggravating factors at the acquiring company, such as a history of recidivism, will generally not prevent the acquiror from qualifying for the additional protections of the M&A Policy. Nor will the presence of aggravating factors at the acquired entity generally prevent the acquiror from qualifying for the additional protections of the M&A Policy, provided that those aggravating factors do not continue to affect either the acquiror or the acquired entity following a qualifying voluntary self-disclosure under the M&A Policy.<sup>16</sup>

### **Additional Protections of the M&A Policy**

When an acquiring company makes a voluntary self-disclosure to NSD that qualifies for the additional protections of the M&A Policy, NSD generally will not seek a guilty plea from the acquiror, and there is a presumption that NSD will decline to prosecute the acquiror. Moreover, the

---

<sup>14</sup> Nothing in this M&A Policy should be construed to limit any civil or administrative authorities for reviewing the legality of a corporate transaction, including under antitrust or other competition laws, and no action taken pursuant to this Section should be construed as rendering judgment on the legality of the transaction itself.

<sup>15</sup> See 28 C.F.R. § 0.72; Justice Manual §§ 9-2.136–9-2.138, 9-90.000 *et seq.*

<sup>16</sup> For example, where the criminal conduct at the acquired entity involved upper management and was pervasive within the company, the presence of those aggravating factors at the acquired entity would not prevent the acquiror from qualifying for the M&A Policy if the members of upper management and employees who had participated in the misconduct at the acquired entity were no longer in a position to affect the acquiror or the acquired entity following the acquiror's self-disclosure under the M&A Policy.

acquiror will not be required to pay a criminal fine or forfeit assets, and the misconduct disclosed to NSD will not affect NSD's assessment of the acquiror's history of recidivism in future matters involving the acquiror.

Although the additional protections of the M&A Policy are available only to the acquiror, if the acquired entity continues to exist as a distinct legal entity following the transaction, NSD will credit the acquiror's timely voluntary self-disclosure to the acquired entity, and will consider whether the acquired entity otherwise satisfies the Enforcement Policy's requirements to receive credit for voluntary self-disclosure, full cooperation, and timely and appropriate remediation such that the acquired entity may obtain the benefits of the Enforcement Policy. In cases where an acquiror's voluntary self-disclosure of misconduct by an acquired entity does not qualify for the additional protections of the M&A Policy, NSD will consider whether the acquiror's self-disclosure otherwise satisfies the Enforcement Policy's requirements to receive credit for voluntary self-disclosure, full cooperation, and timely and appropriate remediation such that the acquiror may obtain the benefits of the Enforcement Policy.

### **Definitions Applicable to the M&A Policy**

For purposes of the M&A Policy, the following additional definitions apply:

#### **1. Lawful, Bona Fide Acquisition**

The determination whether a particular transaction constitutes a lawful, bona fide acquisition for purposes of the M&A Policy is within NSD's sole discretion. In assessing the lawfulness of the acquisition, NSD will, among other things, consult and coordinate with the Department's Antitrust Division, and will consider whether affording the acquiror the additional protections of the M&A Policy would interfere or be inconsistent with the purpose or function of any civil or administrative process relevant to the acquisition, including those conducted by CFIUS<sup>17</sup> or Team Telecom.<sup>18</sup>

In assessing whether the transaction served a bona fide business purpose, NSD will generally be guided by the economic and functional realities of the transaction, rather than the particular labels chosen by the parties, or formalisms of corporate structure that may obscure the identities of those exercising effective control over the parties to the transaction. In making its determination, NSD may consider, among others, the following factors:

- Whether the transaction was negotiated at arms-length;
- The business justification for the transaction;

---

<sup>17</sup> See generally 31 C.F.R. Part 800.

<sup>18</sup> See generally Establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, E.O. 13913, 85 Fed. Reg. 19643 (April 8, 2020).

- The nature of any relationship between the parties to the transaction, including any overlap or relationship between those holding direct or indirect control or management authority over the parties to the transaction, or between those holding direct or indirect ownership interests in the parties to the transaction;
- Whether the transaction resulted in a true change in control over the acquired entity in exchange for a real transfer of value;
- The condition of the parties to the transaction before and after the transaction, including information about their investors, shareholders, directors, management, employees, corporate structure and governance, business history (e.g., industry, business and product lines, regions, etc.), and financial condition, and the extent to which the resulting company differs from the corporate entity where the misconduct occurred, including whether the new entity operates with a significantly more robust compliance function and under new management not associated with the prior misconduct; and
- How and when the acquiror discovered the misconduct committed by the acquired entity.

If NSD determines that the acquiror or its agents have presented false or misleading information to the Department (including about the extent of their prior knowledge of the acquiree's misconduct), that the transaction was engineered to circumvent accountability for misconduct, or that the misconduct disclosed to NSD involved both parties to the transaction, the additional protections of the M&A Policy will not be available to the acquiror.

Although the M&A Policy contemplates an acquiror and an acquiree, NSD may in its discretion afford the additional protections of the M&A Policy to entities involved in different kinds of transactional structures. In deciding whether to apply a presumption of declination in such cases, NSD will consider, in addition to the foregoing factors, whether affording the additional protections of the M&A Policy to entities involved in the transaction would promote the underlying purposes of the M&A Policy, *see* Justice Manual § 9-28.900(B).

## **2. Timely Self-Disclosure and Remediation**

An acquiring company's voluntary self-disclosure of misconduct by an acquired entity will generally be considered timely for purposes of the M&A Policy if the acquiror makes the voluntary self-disclosure to NSD within 180 days after the date the transaction is completed. An acquiror's remediation of misconduct by an acquired entity will generally be considered timely for purposes of the M&A Policy if appropriate remediation is completed within 1 year after the date the transaction is completed. Provided, however, that:

- When an acquiring company becomes aware of conduct by the acquired entity that presents a current and ongoing threat to the national security of the United States,<sup>19</sup> or a

---

<sup>19</sup> In this context, conduct that presents a current and ongoing threat to the national security of the United States refers to continuing or prospective, not purely historical, criminal violations of U.S. law relating to matters conducted, handled, or supervised by the Assistant Attorney General for National Security. *See* 28 C.F.R. § 0.72;

current and ongoing threat of harm to persons or property wherever located, a voluntary self-disclosure of such conduct to NSD, and remediation to prevent the harm threatened by such conduct will be considered timely only if made immediately, i.e., at the earliest reasonable opportunity; and

- NSD may, in its sole discretion, determine that an acquiring company's voluntary self-disclosure made outside the 180-day period, or its remediation completed outside the 1-year period is timely if the acquiror carries its burden of persuading NSD that its delay in making the voluntary self-disclosure or completing the remediation was reasonable under all of the circumstances, including the acquiring company's best efforts to complete reasonably scoped and resourced diligence and integration of the acquired company within the relevant time period, the lack of opportunity for pre-acquisition diligence, the complexity of the transaction, the size and complexity of the businesses to be integrated, and any efforts by culpable individuals to obstruct the acquiring company's diligence and integration efforts.