United States Attorneys' Offices
Voluntary Self-Disclosure Policy

INTRODUCTION

The Deputy Attorney General's September 15, 2022 memorandum, "Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group," instructed that each component of the Department of Justice (the "Department") that prosecutes corporate crime should review its policies on corporate voluntary self-disclosure and, if there is no formal written policy to incentivize self-disclosure, it must draft and publicly share such a policy.

The Attorney General's Advisory Committee (AGAC) requested that the White Collar Fraud Subcommittee of the AGAC, under the leadership of U.S. Attorney for the Eastern District of New York Breon Peace (Chair), recommend relevant policies and procedures for consideration. The below policy was prepared by a Corporate Criminal Enforcement Policy Working Group comprised of U.S. Attorneys from geographically diverse districts, including U.S. Attorney Peace, as well as U.S. Attorney for the Northern District of California Stephanie Hinds, U.S. Attorney for the District of Connecticut Vanessa Avery, U.S. Attorney for the District of Hawaii Clare Connors, U.S. Attorney for the District of New Jersey Philip Sellinger, U.S. Attorney for the Eastern District of North Carolina Michael F. Easley, Jr., U.S. Attorney for the Eastern District of Virginia Jessica Aber, and U.S. Attorney for the Western District of Virginia Christopher Kavanaugh. Mandy Riedel, White Collar Crimes Coordinator for the Executive Office for U.S. Attorneys, also participated in the development of this policy.[1]

The Office of the Deputy Attorney General has reviewed and approved this policy. The policy shall apply to all United States Attorney's Offices and is effective immediately.

[1] This policy was updated on March 7, 2024, to include the new Section II. B. Mergers & Acquisitions ("M&A") Due Diligence and Remediation, which was developed with the participation of Joshua Levy, U.S. Attorney for the District of Massachusetts.

POLICY[2]

I. Voluntary Self-Disclosure Program

In circumstances where a company becomes aware of misconduct by employees or agents before that misconduct is publicly reported or otherwise known to the Department, companies may come to the United States Attorney's Office (the "USAO") and disclose that misconduct, enabling the government to investigate and hold wrongdoers accountable more quickly than would otherwise be the case.

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. *See* Memorandum from Deputy Attorney General Lisa Monaco, "Further Revisions to Corporate Criminal Enforcement Policies Following Discussion with Corporate Crime Advisory Group," Sept. 15, 2022 (referred to herein as the "Monaco Memo").[3]

Crediting voluntary self-disclosure of misconduct by companies helps incentivize self-reporting and ensure individual accountability for misconduct. This policy sets forth the criteria the USAO uses in determining an appropriate resolution for an organization that makes a Voluntary Self-Disclosure (VSD) of misconduct to the USAO, the USAO's expectations of what constitutes a VSD, and clear and predictable benefits for such VSDs. Companies that voluntarily self-disclose misconduct to the USAO pursuant to this policy will receive resolutions under more favorable terms than if the government had learned of the misconduct through other means.[4] (*See* Section II – Benefits of Meeting the Standards of Voluntary Self-Disclosure).

In cases where the company is being jointly prosecuted by a USAO and another Department office or component, or where the misconduct reported by the company falls within the scope of conduct covered by VSD policies administered by other Department offices or components,[5] the USAO will coordinate with, or, if necessary, obtain approval from, the

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[2] The contents of this memorandum provide internal guidance to prosecutors on legal issues. Nothing in it is intended to create any substantive or procedural rights, privileges, or benefits enforceable in any administrative, civil, or criminal matter by prospective or actual witnesses or parties.

[3] Consistent with the Monaco Memo, the terms corporation and company apply to all types of business organizations, including but not limited to partnerships, sole proprietorships, government entities, and unincorporated associations. *See* Justice Manual ("JM") § 9-28.200.

[4] The policy applies to all companies, including those that have been the subject of prior resolutions. Department prosecutors will weigh and appropriately credit all VSDs on a case-by-case basis, pursuant to this policy and applicable Department guidance.

[5] *See, e.g.*, Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy (Criminal Division); Leniency Policy and Procedures (Antitrust Division); NSD Enforcement Policy for Business Organizations (National Security Division); Environmental Crimes Section Voluntary Self-Disclosure

Department component responsible for the VSD policy specific to the reported misconduct when considering a potential resolution and before finalizing any resolution. Consistent with relevant provisions of the Justice Manual and as allowable under alternate VSD policies, the USAO may choose to apply any provision of an alternate VSD policy in addition to, or in place of, any provision of this policy.

Even if companies believe the government may already be aware of the misconduct through other means, companies are encouraged to make disclosures to the Department. Prompt self-disclosures to the government will be considered favorably, even if they do not satisfy all the VSD criteria set forth below.[6]

A. Standards of Voluntary Self-Disclosure

Decisions about whether a disclosure constitutes a VSD will be made by the USAO based on a careful assessment of the circumstances of the disclosure on a case-by-case basis and at the sole discretion of the USAO. The USAO will require that a disclosure meet each of the following standards for it to constitute a VSD under this policy:

1. Voluntary: VSDs only occur when the disclosure of misconduct is made voluntarily by the company. A disclosure will not be deemed a VSD under this policy where there is a preexisting obligation to disclose, such as pursuant to regulation, contract, or a prior Department resolution (*e.g.*, non-prosecution agreement or deferred prosecution agreement).[7]

2. Timing of the Disclosure: A disclosure will only be deemed a VSD when the disclosure is made to the USAO:

Policy (Environment and Natural Resources Division); Consumer Protection Branch Voluntary Self-Disclosure Policy for Business Organizations (Consumer Protection Branch); The Corporate Voluntary Self-Disclosure Policy of the Tax Division (Tax Division).

[6] Regardless of whether a disclosure meets the standards of a VSD, prosecutors will continue to consider the corporation's pre-indictment conduct, *e.g.*, voluntary disclosure or cooperation, in determining whether to seek an indictment. JM § 9-28.400. Separate from this formal VSD Program, the Department continues to encourage corporations, as part of their compliance programs, to conduct internal investigations and to disclose the relevant facts to the appropriate authorities. *See* JM § 9-28.900. A corporation's timely and voluntary disclosure of wrongdoing is among the factors prosecutors should consider in reaching a decision as to the proper treatment of a corporate target in conducting an investigation, determining whether to bring charges, and negotiating plea or other agreements. *See* JM § 9-28.300. Prosecutors may also consider a corporation's timely and voluntary disclosure, as an independent factor in evaluating the company's overall cooperation and the adequacy of the corporation's compliance program and its management's commitment to the compliance program. *See* JM § 9-28.900.

[7] This policy also does not apply in situations where disclosure of a company's misconduct to the USAO was made by whistleblowers, including those who have informed the Department of fraud and other misconduct in *qui tam* actions.

a. "prior to an imminent threat of disclosure or government investigation," U.S.S.G. § 8C2.5(g)(1);

b. prior to the misconduct being publicly disclosed 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.

3. Substance of the Disclosure and Accompanying Actions: For a disclosure to be deemed a VSD under this policy, the disclosure must include all relevant facts concerning the misconduct that are known to the company at the time of the disclosure.

The USAO recognizes that a company may not be in a position to know all relevant facts at the time of a VSD because the company disclosed reasonably promptly after becoming aware of the misconduct. Therefore, a company should make clear that its disclosure is 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 the time.

The USAO further expects that the company will move in a timely fashion to preserve, collect, and produce relevant documents and/or information, and provide timely factual updates to the USAO. Should the company conduct an internal investigation, the USAO expects appropriate factual updates as that investigation progresses. *See* JM § 9-28.700.

II. Benefits of Meeting the Standards for Voluntary Self-Disclosure

A. Credit for Voluntary Self-Disclosure, Full Cooperation, and Timely and Appropriate Remediation

Absent the presence of an aggravating factor, the USAO will not seek a guilty plea where a company has (a) voluntarily self-disclosed in accordance with the criteria set forth above, (b) fully cooperated, and (c) timely and appropriately remediated the criminal conduct.[8] Aggravating

[8] In such cases, the resolution could include a declination, non-prosecution agreement, or deferred prosecution agreement. In evaluating whether a company has fully cooperated and timely and appropriately remediated the criminal conduct, the USAO will rely on operative provisions of the Justice Manual and Department policy. *See, e.g.*, Monaco Memo; Memorandum from Deputy Attorney General Lisa O. Monaco, "Corporate Crime Advisory Group and Initial Revisions to Corporate Criminal Enforcement Policies," Oct. 28, 2021.

factors that may warrant the USAO seeking a guilty plea include, but are not limited to, misconduct that:

1. poses a grave threat to national security, public health, or the environment;

2. is deeply pervasive throughout the company; or

3. involved current executive management of the company.

The presence of an aggravating factor does not necessarily mean that a guilty plea will be required. The USAO will assess the relevant facts and circumstances to determine the appropriate resolution.

To meet the standards of this VSD policy, appropriate remediation must include, but is not necessarily limited to, the company agreeing to pay all disgorgement, forfeiture, and restitution resulting from the misconduct at issue.

In addition, where a company fully meets the VSD policy, the USAO may choose not to impose a criminal penalty, and in any event will not impose a criminal penalty that is greater than 50% below the low end of the U.S. Sentencing Guidelines fine range.

If, due to the presence of an aggravating factor, a guilty plea is warranted for a company that has voluntarily self-disclosed, fully cooperated, and timely and appropriately remediated the criminal conduct, the USAO:

1. will accord or recommend to a sentencing court, at least 50% and up to a 75% reduction off the low end of the U.S. Sentencing Guidelines fine range after any applicable reduction under U.S.S.G. § 8C2.5(g), or the penalty reduction benefit set forth in the alternate VSD policy specific to the misconduct at issue, if applicable; and

2. will not require appointment of a monitor if the company has, at the time of resolution, demonstrated that it has implemented and tested an effective compliance program consistent with Subsection B below.

B. Mergers & Acquisitions ("M&A") Due Diligence and Remediation

Effective beginning in October 2023, the Department-wide M&A Policy ("M&A Policy"), *see* JM § 9-28.600 and JM § 9-28.900, applies to misconduct uncovered in the context of M&A pre- or post-acquisition due diligence, which is a subset of circumstances addressed in this policy. Under the circumstances outlined in the M&A Policy, companies can expect a presumption of a declination for criminal conduct uncovered during M&A due diligence. Specifically, under the M&A Policy, an acquiring entity that: (1) timely discloses to the Department misconduct uncovered as a result of pre- or post-acquisition M&A due diligence, which generally means within 180 days of the closing date of the transaction; (2) timely and fully remediates the misconduct,

which generally means within one year of the closing date of the transaction; and (3) agrees to pay all disgorgement/forfeiture, and/or restitution/victim compensation payments resulting from the misconduct at issue, will receive a presumption of a declination. Consistent with the M&A Policy, these baseline timeframes are subject to a reasonableness analysis as determined by the USAO based on the specific facts, circumstances, and complexity of a particular transaction. *See* JM § 9-28.900.

An acquiring company that voluntarily discloses misconduct pursuant to the M&A Policy to the USAO and otherwise satisfies the terms of this VSD policy by fully cooperating, timely and appropriately remediating, and paying any applicable disgorgement/forfeiture, and/or victim compensation payments/restitution will receive a presumption of a declination, even if aggravating factors existed as to the acquired company. If an acquiring company voluntarily discloses misconduct pursuant to the M&A Policy and the acquired company otherwise satisfies the terms of this VSD policy, i.e., full cooperation and timely and appropriate remediation, the acquired company may receive a declination.[9]

Again, the six-month and one-year timelines stated above apply only to misconduct uncovered as a result of pre- or post-acquisition M&A due diligence, consistent with the Department-wide M&A Policy. Therefore, all benefits and requirements of this VSD policy, including those governing the determination of whether a self-report qualifies as a voluntary self-disclosure, remain in full effect for all circumstances that fall outside of the M&A Policy.

C. Effective Compliance and Independent Monitorship

The USAO will not require the imposition of an independent compliance monitor for a cooperating company that voluntarily self-discloses the relevant conduct and timely and appropriately remediates the criminal conduct, if the company demonstrates at the time of resolution that it has implemented and tested an effective compliance program. Decisions about the need for a monitor will be made on a case-by-case basis and at the sole discretion of the USAO.

In evaluating whether the company has implemented and tested an effective compliance program, the USAO will refer to the Monaco Memo. This evaluation shall consider resources developed by the Department of Justice's Criminal Division to assist prosecutors in assessing the effectiveness of a company's compliance program (*see, e.g.*, Criminal Division, Evaluation of Corporate Compliance Programs (updated June 2020)) or guidance provided by other Department components as to specialized areas of corporate compliance.

[9] For disclosures made under the M&A policy, prosecutors will follow the consultation requirements set forth in JM § 9-28.900.