

DOJ Announces Voluntary Self-Disclosure Policy

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by Troy M. Keller



My colleagues have released an excellent update on the DOJ's recently announced corporate enforcement and voluntary self-disclosure policy. For a long time, the Department of Justice has encouraged self-disclosure, at times suggesting companies will be treated better if they do, but no

guarantees. For the first time, they've formalized a policy, and companies should take note and be ready to seriously consider the self-disclosure option when reviewing compliance challenges.

In their update, my colleagues comment:

The new Policy is a marked shift in tone even from DOJ's prior corporate compliance guidelines. Just two years ago, DOJ initiated a pilot disclosure program meant to incentive corporate disclosure. This goes much further, offering the potential of a "public" declination in the event of disclosure absent aggravating circumstances. In the "carrot versus stick" analogy, DOJ is strongly emphasizing "carrot"-based incentives for self-disclosure, cooperation, and remediation.

Given DOJ's focus on self-disclosure, companies should consider proactively reviewing and assessing their internal compliance programs—particularly whistleblower ethics hotlines. The Policy encourages self-disclosure at the "*earliest possible time*," which may potentially include disclosure *before* an issue has been fully investigated. The sooner a company can learn about an issue, the sooner it can alert DOJ to any potential wrongdoing. If a company must self-disclose an issue, it should also be prepared to fully cooperate with the DOJ during the investigative or prosecutorial phases of a DOJ matter. The DOJ has indicated that it will likewise cooperate with companies to remediate

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wrongful conduct. Indeed, the head of the Criminal Division at DOJ, Matthew R. Galeotti has noted, “[w]e want to hear from you... Now is the time to report, remediate, and strengthen compliance to ensure American prosperity.”