

DOJ Voluntary Self-Disclosure Policies – Fact Pattern Comparison (as of April 5, 2023)

<u>Fact Pattern</u>	<u>Criminal Division Policy Resolution</u>	<u>USAO Policy Resolution</u>	<u>ENRD Policy Resolution</u>	<u>Tax Division Policy Resolution</u>	<u>NSD Policy Resolution</u>	<u>CPB Policy Resolution</u>
<p>There are no aggravating factors, and a company:</p> <ul style="list-style-type: none"> ▪ Voluntarily self-discloses ▪ Fully cooperates ▪ Timely and appropriately remediates 	<p>Presumptive declination with disgorgement</p>	<p>USAO will not seek a guilty plea</p> <p>Otherwise, resolution is a matter of USAO discretion</p> <p>Potential outcomes include:</p> <ul style="list-style-type: none"> ▪ Declination ▪ Deferred prosecution agreement (“DPA”) ▪ Non-prosecution agreement (“NPA”) <p>Where a company fully meets the USAO Policy requirements, the USAO will not impose a criminal penalty that is greater than 50% below the low end of the U.S. Sentencing Guidelines (“USSG”) range, in addition to disgorgement, forfeiture, or restitution</p>	<p>ENRD will not seek a guilty plea</p> <p>Otherwise, resolution is a matter of ENRD discretion</p> <p>Potential outcomes include:</p> <ul style="list-style-type: none"> ▪ Non-prosecution of the case (presumably, a declination, a DPA, or an NPA) ▪ Referral for civil or administrative enforcement in lieu of criminal prosecution 	<p>The Tax Division will not seek a guilty plea</p> <p>Otherwise, resolution is a matter of the Tax Division’s discretion</p> <p>Potential outcomes include:</p> <ul style="list-style-type: none"> ▪ Declination ▪ DPA ▪ NPA <p>Where a company fully meets the Tax Division Policy requirements, the Tax Division will not impose a criminal penalty that is greater than 50% below the low end of the USSG range, in addition to disgorgement, forfeiture, or restitution</p>	<p>NSD will not seek a guilty plea</p> <p>Otherwise, resolution is a matter of NSD’s discretion</p> <p>Potential outcomes include:</p> <ul style="list-style-type: none"> ▪ Declination ▪ NPA 	<p>CPB will not seek a guilty plea</p> <p>Otherwise, resolution is a matter of CPB discretion</p>
<p>There is at least one aggravating factor,</p>	<p>Declination with disgorgement at DOJ’s discretion if the company:</p>	<p>No explicit path to a declination is reflected in the USAO Policy where there is an aggravating factor, and</p>	<p>No explicit path to a declination is reflected in the ENRD Policy where there is an aggravating factor, and</p>	<p>No explicit path to a declination is reflected in the Tax Division Policy where there is an aggravating factor,</p>	<p>No explicit path to a declination is reflected in the NSD Policy where there is an aggravating factor,</p>	<p>No explicit path to a declination is reflected in the CPB Policy where there is an aggravating</p>

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<p>and possibly more, and a company:</p> <ul style="list-style-type: none"> ▪ Voluntarily self-discloses ▪ Fully cooperates ▪ Timely and appropriately remediates 	<ul style="list-style-type: none"> ▪ Voluntarily self-discloses “immediately” ▪ At the time of the misconduct and the voluntary self-disclosure, had an effective compliance program and system of internal accounting controls, which enabled identification of misconduct and led to the voluntary self-disclosure ▪ Engages in “extraordinary” cooperation and remediation <p>If a declination is not appropriate, the company will generally receive an NPA or a DPA, absent “particularly egregious or multiple aggravating circumstances” that result in DOJ requiring a guilty plea. In addition:</p> <ul style="list-style-type: none"> ▪ The company will receive a 50-75% discount off the USSG range (from the low end 	<p>the USAO Policy preserves USAOs’ ability to seek a guilty plea if even one aggravating factor is present</p> <ul style="list-style-type: none"> ▪ Guilty Plea: USAO will recommend to the sentencing court a 50-75% reduction off the low end of the USSG range (no express difference for recidivists (repeat corporate offenders) and non-recidivists), or the penalty reduction benefit set forth in another voluntary self-disclosure policy specific to the misconduct at issue ▪ DPA or NPA: USAO may choose to impose no criminal penalty and will not impose a penalty greater than 50% of the low end of the USSG range (no express difference for recidivists and non-recidivists); USAO does not expressly carve out a path to a DPA or an NPA where an aggravating factor is present 	<p>the ENRD Policy preserves ENRD’s ability to seek a guilty plea if even one aggravating factor is present</p> <ul style="list-style-type: none"> ▪ Guilty Plea: ENRD will consider a reduction in the number and type of charges the company must plead guilty to, and/or recommend to the sentencing court a more lenient criminal fine, period of probation, and/or probation conditions ▪ DPA or NPA: ENRD does not expressly carve out a path to a DPA or an NPA where an aggravating factor is present ▪ The ENRD Policy states that “[b]ecause the fine guidelines in § 8C2.2 through § 8C2.9 of the USSG do not apply to environmental offenses,” ENRD does not specify a percentage reduction in criminal fines as part of its policy 	<p>and the Tax Division Policy preserves the Tax Division’s ability to seek a guilty plea if even one aggravating factor is present</p> <ul style="list-style-type: none"> ▪ Guilty Plea, DPA, or NPA: The Tax Division will accord, or recommend to the sentencing court, a 50-75% reduction off the low end of the USSG range (from the low end for non-recidivists; from a higher point for recidivists) <p>Generally, the Tax Division will not impose an independent compliance monitor if the company has implemented and tested an effective compliance program at the time of the resolution</p>	<p>although an NPA is still possible at NSD’s discretion, and the NSD Policy preserves NSD’s ability to seek a guilty plea generally only if “particularly egregious or multiple aggravating factors” are present</p> <ul style="list-style-type: none"> ▪ Guilty Plea, DPA, or NPA: NSD will accord, or recommend to the sentencing court, a fine that is at least 50% less than the amount available under 18 U.S.C. § 3571(d) (<i>i.e.</i>, recommended fine will be capped at an amount equal to the gross gain or gross loss); any forfeiture payment will be no greater than the value of proceeds received by the company <p>Generally, NSD will not impose an independent compliance monitor if the company has implemented and tested an effective compliance program at the time of the resolution and</p>	<p>factor, and the CPB Policy preserves CPB’s ability to seek a “a more stringent resolution” if aggravating factors are present “to a significant degree”</p> <p>Generally, CPB will not impose an independent compliance monitor if the company has implemented and tested an effective compliance program at the time of resolution</p>

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	<p>for non-recidivists; from a higher point for recidivists)</p> <p>Generally, DOJ will not impose an independent compliance monitor if the company has implemented and tested an effective compliance program at the time of resolution and remediated the root cause of the misconduct</p>	Generally, USAOs will not impose an independent compliance monitor if the company has implemented and tested an effective compliance program at the time of resolution	Generally, ENRD will not impose an independent compliance monitor if the company has implemented and tested an effective compliance program at the time of the resolution		remediated the root cause of the misconduct	
<p>A company:</p> <ul style="list-style-type: none"> ▪ Does <u>not</u> voluntarily self-disclose ▪ Fully cooperates ▪ Timely and appropriately remediates 	Up to a 50% discount off the USSG range (from the low end for non-recidivists; from a higher point for recidivists)	The USAO Policy does not address benefits (if any) to be provided where a company does not voluntarily self-disclose	The ENRD Policy does not address benefits (if any) to be provided where a company does not voluntarily self-disclose	Up to a 50% discount off the USSG range (from the low end for non-recidivists; from a higher point for recidivists)	The NSD Policy does not address benefits (if any) to be provided where a company does not voluntarily self-disclose	The CPB Policy does not address benefits (if any) to be provided where a company does not voluntarily self-disclose