

November 25, 2019

DOJ Updates FCPA Corporate Enforcement Policy

On November 20, 2019, the Fraud Section of DOJ's Criminal Division announced changes to its Foreign Corrupt Practices Act ("FCPA") Corporate Enforcement Policy ("the Policy"). The Policy, which began as a pilot program in April of 2016 and was formally introduced in November of 2017, rewards companies for voluntarily self-reporting violations of the FCPA. Companies that self-disclose, cooperate fully, and make timely and appropriate remediation earn a presumption of declination in FCPA matters. Following on a [March update to the Policy](#) and an [April update to DOJ's Evaluation of Corporate Compliance Programs Guidance Document](#), the changes outlined below are designed to clarify what companies need to disclose, and when, to obtain the benefits of the Policy.

The Policy now states that a company must disclose "all relevant facts known to it *at the time of the disclosure*." DOJ further emphasizes this point in a footnote, stating that it "recognizes that a company may not be in a position to know all relevant facts at the time of a voluntary self-disclosure." A company that makes a disclosure while continuing its investigation should make this fact known to DOJ.

Further incentivizing companies to make a voluntary disclosure early in the investigative process, the Policy now requires companies to disclose facts "*as to any individuals*" who played a substantial part in the "*misconduct at issue*." The previous iteration of the Policy required companies to disclose "all relevant facts" regarding individuals substantially involved in a "violation of law." A company making a disclosure no longer needs to determine that a "violation" occurred at the outset of an investigation.

Similarly, companies now need only alert DOJ of evidence of the misconduct when they become aware of it. Previously, in order to gain credit, where the company was *or should have been* aware of relevant evidence outside of its possession, the company had to identify such evidence to DOJ. The Policy has been updated to remove the conditional language, which should ease the burden on companies seeking to comply with the Policy.

The updates to the Policy highlight DOJ's desire for self-disclosures that are both substantive and made at an early stage. They are also practical, in particular removing the requirement that a company identify evidence of which it "should be" aware. The changes are in line with other recent DOJ policy changes, seeking to recognize practical realities of the policies.