

## DOJ CRIMINAL DIVISION LAUNCHES NEW FCPA PILOT PROGRAM ON SELF DISCLOSURE



In a move surely to be welcome by US companies doing business overseas, Assistant Attorney General Leslie Caldwell on April 5 announced a one-year pilot program intended to encourage companies to self-report FCPA offenses and cooperate with the Justice Department.

Companies that report early and cooperate will receive credit—up to a 50 percent reduction off the bottom end of the US Sentencing Guidelines fine range.

Appointment of a monitor wouldn't be required for cooperators "if a company has, at the time of resolution, implemented an effective compliance program."

The DOJ would also consider a declination for companies that meet the new guidelines, [it said](#).

The DOJ released a nine-page memo Tuesday written by Andrew Weissmann, chief of the DOJ fraud section. It's called the Foreign Corrupt Practices Act Enforcement Plan and Guidance.

Weissmann said the new one-year pilot program "draws a clear distinction between credit that you can be eligible for voluntary self-disclosure as opposed to companies that may decide to wait to see if they get caught, and then cooperate."

Assistant AG Caldwell said the DOJ has added ten new prosecutors for FCPA cases, doubling the size of the FCPA unit. The FBI has three new squads of special agents devoted to FCPA investigations and prosecutions.

Weissmann's memo said the DOJ is "strengthening its coordination with foreign counterparts in the effort to hold corrupt individuals and companies accountable."

The DOJ is sharing leads, documents, and witnesses with international law enforcement counterparts, "and they are sharing them with us," the memo said.

"The fruits of this increased international cooperation can be seen in the prosecutions of both individuals and corporations, in cases involving Archer Daniels Midland, Alcoa, Alstom, Dallas Airmotive, Hewlett-Packard, IAP, Marubeni, Vadim Mikerin, Parker Drilling, PetroTiger, Total, and VimpelCom, among many others," the memo said.

Last year, the DOJ published [the Yates Memo](#). It set new standards for the prosecution of individuals in FCPA cases. The new guidance issued Tuesday continues that.

"[T]his pilot program is intended to encourage companies to disclose FCPA misconduct to permit the prosecution of individuals whose criminal wrongdoing might otherwise never be uncovered by or disclosed to law enforcement," Weissmann's memo said.

The Fraud Section's Foreign Corrupt Practices Act Enforcement Plan and Guidance dated April 5, 2016, is [here](#) (pdf).





*Largely following the OIG “7 elements” for implementing an effective compliance program, DOJ’s guidance described an effective compliance program as follows:*

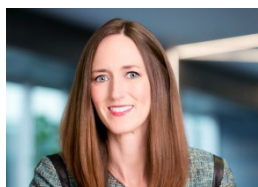
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Implementation of an effective compliance and ethics program, the criteria for which will be periodically updated and which may vary based on the size and resources of the organization, but will include:

- Whether the company has established a **culture of compliance**, including an awareness among employees that any criminal conduct, including the conduct underlying the investigation, will not be tolerated
- Whether the company **dedicates sufficient resources** to the compliance function
- The **quality and experience of the compliance personnel** such that they can understand and identify the transactions identified as posing a potential risk
- The **independence** of the compliance function
- Whether the company’s compliance program has performed an **effective risk assessment** and tailored the compliance program based on that assessment
- How a company’s compliance **personnel are compensated and promoted** compared to other employees
- The **auditing** of the compliance program to assure its effectiveness
- The **reporting structure** of compliance personnel within the company
- Appropriate **discipline of employees**, including those identified by the corporation as responsible for the misconduct, and a system that provides for the possibility of disciplining others with oversight of the responsible individuals, and considers how compensation is affected by both disciplinary infractions and failure to supervise adequately, and
- Any additional steps that demonstrate recognition of the seriousness of the corporation’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.



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