

Compliance Today – June 2023



Scott R. Grubman (sgrubman@cglawfirm.com, [linkedin.com/in/sgrubman/](https://www.linkedin.com/in/sgrubman/)) is Partner at Chilivis Grubman, Atlanta, GA.

United States Attorneys' Offices issue nationwide, uniform policy on voluntary self-disclosures

by Scott R. Grubman

Throughout the last 25 years, as the number of corporate criminal investigations and enforcement actions have steadily increased, the U.S. Department of Justice (DOJ) has released various memorandums and other guidance documents regarding corporate criminal enforcement and prosecutions, including information on the contours of corporate cooperation credit and self-disclosure protocols. Although they do not have the “force of law,” as they are not statutes or regulations, they are nonetheless critical policy documents that govern the relationship between DOJ and businesses, provide invaluable guidance to businesses in what one should and should not do throughout a DOJ investigation, as well as how to self-disclose certain misconduct.

DAG Memos: From Holder to Monaco

In 1999, then-Deputy Attorney General (DAG) Eric Holder (who would later go on to be the Attorney General under President Barack Obama) issued the first such document, a memorandum entitled “Bringing Criminal Charges Against Corporations”—which would become known as the “Holder Memo.”^[1] That document laid out some of the basic principles that would become the very foundation of corporate criminal enforcement and prosecutions in the years since. For example, the Holder Memo started off by making a point that, while likely noteworthy at the time, has since become a basic tenant of corporate enforcement: “Corporations should not be treated leniently because of their artificial nature nor should they be subject to harsher treatment.”

Four years later, in 2003, then-DAG Larry Thompson issued his own memo (the “Thompson Memo”), which received significant criticism for stating that, in order to gain full cooperation credit, a corporation should waive its attorney–client privilege and work–product protections.^[2] That missive was rescinded two years later when DAG Paul McNulty issued the “McNulty Memo,”^[3] which made clear that a corporation does not have to waive attorney–client privilege in order to gain full cooperation credit. The memos that followed included the “Filip Memo” in 2008,^[4] and the “Yates Memo” in 2015,^[5] the latter of which focused on individual accountability.

The latest DAG Memo, issued in September 2022 by DAG Lisa Monaco, is officially titled “Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advocacy Groups,” but better known by its nickname—you guessed it!—the “Monaco Memo.”^[6] In that document, Monaco noted that DOJ’s “first priority” in corporate criminal matters “is to hold accountable the individuals who commit and profit from corporate crime.” This was a continuation of prior policy documents, particularly the Yates Memo, which focused on individual accountability. According to Monaco, individual accountability helps deter future misbehavior, among other benefits. The Monaco Memo goes on to state: “To be eligible for any cooperation credit, corporations must disclose to the Department all relevant, non-privileged facts about individual

misconduct.”

The Monaco Memo then directs all DOJ components that prosecute corporate crime “to review its policies on corporate voluntary self-disclosure, and if the component lacks a formal, written policy to incentivize such self-disclosure, it must draft and publicly share such a policy.” The Monaco Memo requires such policies to set forth the following components:

[E]xpectations of what constitutes a voluntary self-disclosure, including with regard to the timing of the disclosure and the need for the disclosure to be accompanied by timely preservation, collection, and production of relevant documents and/or information, and a description of the types of information and facts that should be provided as part of the disclosure process. The policies should also lay out the benefits that corporations can expect to receive if they meet the standards for voluntary self-disclosure under that component’s policy.

This document is only available to members. Please [log in](#) or [become a member](#).

[Become a Member](#) [Login](#)