

## **DOJ Voluntary Self Disclosure 2023 Update**

**Richard P. Kusserow | August 2023**

### **Tips for Compliance Officers**

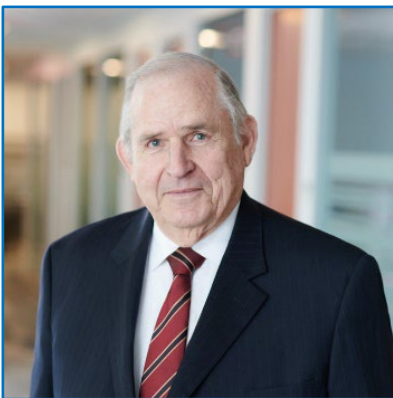
The DOJ has released its new Voluntary Self-Disclosure (VSD) Policy on how U.S Attorneys will determine whether a company has made a voluntary self-disclosure and the benefits for making voluntary self-disclosure, fully cooperating, and remediating the criminal conduct (including agreeing to pay all disgorgement, forfeiture, and restitution resulting from the misconduct). An organization will be considered as having made a VSD if it becomes aware of misconduct by employees or agents before that misconduct is publicly reported or otherwise known to the DOJ and discloses all relevant facts known to the company about the misconduct in a timely fashion before an imminent threat of disclosure or government investigation.

If the VSD meets these tests, the DOJ will not seek a guilty plea and may also choose not to impose any criminal penalty. Even if they do impose criminal penalties, the penalties would be at least 50% below the low end of the United States Sentencing Guidelines (USSG) fine range. They also will not seek the imposition of an independent compliance monitor if the company demonstrates that it has implemented and tested an effective compliance program. The policy emphasized that, even without a timely voluntary self-disclosure, prosecutors will continue to consider the corporation's pre-indictment conduct (*e.g.*, cooperation) in determining whether to seek an indictment. The policy also encourages compliance programs to conduct internal investigations, fully and timely cooperate, and remediate misconduct. It was also noted that the burden will be on the company to demonstrate that the disclosure was timely and there was disclosure of "all relevant facts," including "all relevant facts and evidence about all individuals involved in or responsible for the misconduct at issue." Compliance Officers should consider the following:

- Ensuring development, dissemination, and training on policies and procedures that strongly encourage internal reporting of employee misconduct.

- Ensuring the capability to investigate reported misconduct and suspected violations of law, regulation, Code, and policies appropriately and thoroughly.
- Promptly addressing all reports of misconduct to determine whether self-disclosure should be considered.
- Establishing written protocols (policies) concerning the relationship between the Legal Counsel and the Compliance Officer that includes how determinations of disclosure to DOJ, OIG, and CMS of potential violations would be made.

Keep up-to-date with Strategic Management Services by following us on [LinkedIn](#).



### About the Author

Richard P. Kusserow established Strategic Management Services, LLC, after retiring from being the DHHS Inspector General, and has assisted over 2,000 health care organizations and entities in developing, implementing and assessing compliance programs.