

DOJ Releases “First-Ever” Corporate Enforcement Policy Promoting Self-Disclosure and Cooperation

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The Department of Justice (“DOJ”) has announced a new, “first-ever” Corporate Enforcement and Voluntary Self-Disclosure Policy (the “Policy” or “CEP”) for prosecuting corporate criminal conduct. Last year, DOJ announced it was “turning a new page” on white collar and corporate enforcement efforts. Fast forward to the present, DOJ is now seeking to proactively incentivize responsible corporate behavior through the Policy, while simultaneously acknowledging the public’s interest in rooting out fraud and corruption and the government’s stated interest in “swift criminal justice.”

The CEP incentivizes companies to disclose misconduct to DOJ by minimizing uncertainty for companies that do so. DOJ’s stated goals in implementing the Policy are: (1) drive early, voluntary self-disclosure of criminal conduct, (2) promote timely and effective enforcement of criminal laws, including holding culpable individuals accountable, (3) reduce harm, (4) facilitate prompt remedial action, including requiring companies to compensate victims and address corporate deficiencies, (5) help ensure consistency across the DOJ, and (6) transparently describe the DOJ’s policies and decision-making.

Here’s What Companies and Organizations Need to Know:

1. DOJ Will Decline to Prosecute When Certain Factors are Met.

Under the CEP, companies that meet the Division’s core requirements *will* receive a *public* declination of prosecution. The core requirements are:

- (1) Voluntarily self-disclosing misconduct;
- (2) Fully cooperating with a DOJ investigation;
- (3) Timely and appropriately remediating the misconduct; and
- (4) The issue presents no aggravating circumstances.

To qualify as a “voluntary self-disclosure,” a company must make a good faith effort to disclose such misconduct to the appropriate DOJ department within a reasonable time

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after becoming aware of the misconduct. At the time of disclosure, the reported conduct must also be previously unknown by DOJ, and the company must not currently be under a pre-existing obligation to report conduct to DOJ or under an “imminent threat of... government investigation.” The CEP emphasizes that companies should disclose at the “earliest possible time,” even before an internal investigation is completed.

Even if companies present “aggravating circumstances” that weigh against a presumptive declination under the CEP, the CEP encourages self-disclosure and cooperation. The CEP vaguely describes potential “aggravating circumstances” as including factors that impact “the nature and seriousness of the offense, egregiousness or pervasiveness of the misconduct within the company, severity of harm caused by the misconduct, or corporate recidivism, specifically, a criminal adjudication or resolution either within the last five years or otherwise based on similar misconduct by the entity engaged in the current misconduct.” Even when such circumstances are present, however, the CEP states that prosecutors have discretion to recommend a CEP declination based on “weighing the severity of [aggravating] circumstances and the company’s voluntary self-disclosure, cooperation and remediation.”

The CEP clarifies that a company receiving a declination will still be required to pay all disgorgement, forfeiture, restitution, or victim compensation payments resulting from any misconduct.

2. DOJ Prosecutors Have a Large Amount of Discretion.

The Policy also takes into account “near miss” voluntary self-disclosures and aggravating factors that do not result in declinations. Specifically, the CEP provides that lenient resolutions may still be appropriate where a company “fully cooperated and timely and appropriately remediated” but (1) did not meet the requirements for a voluntary self-disclosure and/or (2) present aggravating factors that warrant a criminal resolution. In these “near miss” circumstances, the CEP suggests that DOJ will provide a Non-Prosecution Agreement (“NPA”) for a term length of fewer than three years that does not require an independent compliance monitor and provides a reduction of at least 50% but not more than 75% off the low end of the U.S. Sentencing Guidelines (“U.S.S.G.”) fine range.

Even in the event a company does not meet the requirements for a declination and does not qualify as a “near-miss” voluntary self-disclosure, the Policy indicates that DOJ maintains discretion to determine the appropriate resolution including form, term length, and compliance obligations. The DOJ also retains discretion to determine monetary penalties for corporate enforcement matters, but the Policy indicates that prosecutors cannot recommend a reduction of more than 50% reduction of the fine under the U.S.S.G.

3. National Security

The CEP underscores the expectation that companies proactively identify potential violations and engage with enforcement authorities when issues arise. This need is

amplified in the national security space, where enforcement authorities pursue cases involving sensitive technology or companies or individuals who are targets of U.S. economic sanctions. Export violations can occur through compliance lapses but sometimes may also have elements of intentional or reckless activity. The CEP makes clear that companies will be best positioned to mitigate enforcement consequences if they voluntarily disclose violations to and cooperate with the DOJ.

The CEP's approach is similar to the 2024 DOJ National Security Division Enforcement Policy for Business Organizations, which already emphasized timely voluntary disclosures, cooperation, and remediation in the context of U.S. export controls and sanctions violations. The continuity highlights the DOJ's commitment to push companies to identify and report violations of U.S. law. Robust compliance programs and internal controls are therefore critical not only for preventing violations but also for detecting them at an early stage, and to obtain mitigating credit for reporting them. Companies operating in export-controlled or sanctions-sensitive sectors should continue to build and invest in compliance programs capable of identifying potential breaches and facilitating timely internal reporting and disclosure.

Take-Aways

The new Policy is a marked shift in tone even from DOJ's prior corporate compliance guidelines. Just two years ago, DOJ initiated a pilot disclosure program meant to incentive corporate disclosure. This goes much further, offering the potential of a "public" declination in the event of disclosure absent aggravating circumstances. In the "carrot versus stick" analogy, DOJ is strongly emphasizing "carrot"-based incentives for self-disclosure, cooperation, and remediation.

Given DOJ's focus on self-disclosure, companies should consider proactively reviewing and assessing their internal compliance programs—particularly whistleblower ethics hotlines. The Policy encourages self-disclosure at the "earliest possible time," which may potentially include disclosure *before* an issue has been fully investigated. The sooner a company can learn about an issue, the sooner it can alert DOJ to any potential wrongdoing. If a company must self-disclose an issue, it should also be prepared to fully cooperate with the DOJ during the investigative or prosecutorial phases of a DOJ matter. The DOJ has indicated that it will likewise cooperate with companies to remediate wrongful conduct. Indeed, the head of the Criminal Division at DOJ, Matthew R. Galeotti has noted, "[w]e want to hear from you... Now is the time to report, remediate, and strengthen compliance to ensure American prosperity."