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DOJ Corporate Enforcement Update: The New Department-Wide Self-Disclosure Policy

The corporate enforcement of any potential corporate criminal misconduct is now governed by a DOJ-wide policy.

On March 10, 2026, the US Department of Justice (DOJ) announced a new department-wide "Corporate Enforcement and Voluntary Self-Disclosure Policy" (the CEP). The CEP addresses the benefits available to companies that voluntarily disclose, cooperate, and remediate potential criminal misconduct.

The CEP has important practical implications for any company that discovers potential misconduct and must decide what to do next. The CEP seeks to establish a predictable framework — with defined tiers, benefits, and requirements — regardless of which DOJ office handles the matter.

Notably, the CEP marks the first time that DOJ has issued a department-wide policy on self-disclosures. While DOJ has long told prosecutors to weigh self-reporting, cooperation, and remediation under the Justice Manual when making charging and resolution decisions, and the Criminal Division and US Attorney's Office for Southern District of New York have each issued their own self-disclosure frameworks, the CEP sets forth the first DOJ-wide framework that links those same factors to prescribed paths for declinations, non-prosecution agreements (NPAs), independent monitor decisions, and penalty reductions. For information on SDNY's New Corporate Enforcement and Voluntary Self-Disclosure Program for Financial Crimes, see this Latham Client Alert.

The CEP appears to supersede the Criminal Division and SDNY frameworks, at least to the extent there are inconsistencies. Although this status is not expressly stated in the CEP, DOJ's accompanying press release states that the CEP "supersed[es] all component-specific or US Attorney's Office-specific corporate enforcement policies currently in effect."[1]

This Client Alert analyses the CEP and explains what it means in practice for companies.

Key Components of the CEP

Scope

The CEP applies to all corporate criminal matters handled by DOJ, with the exception of antitrust violations under 15 U.S.C. §§ 1–38.[2] This means the CEP reaches matters handled by every DOJ component and every US Attorney's Office nationwide.

Three-Part Structure

The CEP adopts a three-part structure classifying self-disclosures into tiers with diminishing benefits based on a number of factors.

- **Part I — Declination.** A company that self-discloses, fully cooperates, and timely remediates will get a declination if there are no aggravating factors. The company must still pay all disgorgement, forfeiture, and restitution. All declinations are made public.
- **Part II — "Near Miss."** DOJ will offer NPAs in certain circumstances if the company fully cooperated and timely and appropriately remediated but cannot benefit from the full declination because of (1) a failure to meet every requirement for voluntary self-disclosure despite a good-faith self-report (discussed below), and/or (2) aggravating circumstances. If a company falls within the "Near Miss" provision, the DOJ will agree to the following:
    - An NPA (absent egregiousness or multiple aggravating factors)
    - An NPA term under three years
    - No independent compliance monitor
    - A penalty reduction of 50%-75% off the low end of the US Sentencing Guidelines range
- **Part III — All Other Cases.** Where Parts I and II do not apply, prosecutors retain full discretion over the form of any resolution, term, monitor and other compliance obligation, and penalty. Under this provision, DOJ will not recommend a reduction of more than 50%.

Self-Disclosure Requirements

To qualify for a Part I declination, the company must make a voluntary self-disclosure that satisfies five conditions: (1) a good-faith disclosure to the appropriate DOJ criminal component; (2) the misconduct was not already known to DOJ; (3) the company had no pre-existing duty to disclose to DOJ; (4) the disclosure occurred before any imminent threat that DOJ would learn of the conduct; and (5) the company disclosed within a reasonably prompt time, with the burden on the company to show timeliness.

The CEP includes an exception for the Corporate Whistleblower Awards Pilot Program.[3] If a whistleblower reports both internally and to DOJ, the company can still qualify for a declination — as long as it self-reports within 120 days of the internal report and meets all other requirements.

Aggravating Circumstances

DOJ defines aggravating circumstances, which could preclude a Part I declination, to include: (1) the nature and seriousness of the offense; (2) the egregiousness or pervasiveness of the misconduct; (3) the severity of harm; and (4) recidivism, which is defined as a criminal adjudication or resolution within the last five years, or one based on similar misconduct by the entity engaged in the current misconduct. Even

with aggravating factors, the CEP makes clear that prosecutors retain discretion to recommend a declination after weighing the severity of aggravating factors against the company's self-disclosure, cooperation, and remediation.

Cooperation

The CEP provides a lengthy description of what is required for "full cooperation." Key requirements include: (1) disclosing all relevant non-privileged facts, including facts about all individuals involved regardless of rank; (2) attributing facts to specific sources, not just a general narrative; (3) sharing relevant information even when not asked; (4) preserving and producing documents including those located overseas; (5) de-conflicting witness interviews with DOJ's investigation; and (6) making officers and employees available for interviews.

A company starts at zero cooperation credit and earns credit through specific actions. The CEP directs prosecutors to include in resolution agreements enough information to explain why a company received its level of cooperation credit. Eligibility for cooperation credit does not require waiver of attorney-client privilege or work-product protection.

Remediation

A company earns remediation credit by demonstrating that it has: (1) conducted a root-cause analysis and addressed the causes; (2) implemented an effective compliance program; (3) disciplined employees involved in or responsible for the misconduct; (4) retained business records properly, including controls on personal and ephemeral messaging platforms; and (5) taken other steps showing it accepts responsibility and has reduced the risk of repeat conduct.

Financial Conditions

To receive a declination, companies will be required to fulfill all disgorgement, forfeiture, and restitution obligations. As background, federal criminal resolutions generally involve three financial obligations: forfeiture, restitution, and a fine. The CEP's requirement is notable in two ways. First, the CEP is silent on fines, suggesting that a company will not be required to pay a fine to receive a declination. Second, the CEP requires disgorgement, which is a remedy sought by civil regulatory agencies such as the SEC and CFTC, rather than DOJ.

Non-Reporters

Part III of the CEP outlines how DOJ will resolve matters against companies that do not self-report or otherwise do not qualify for self-disclosure credit under Parts I or II. Prosecutors have full discretion with respect to criminal resolution, and the maximum penalty reduction is 50%. The reduction will likely be made from the low end of the US Sentencing Guidelines range for companies that fully cooperate and remediate, but there is no guarantee.

Key Takeaways

The corporate enforcement of any potential corporate criminal misconduct is now governed by a DOJ-wide policy. A company that discovers potential misconduct in an area typically handled by a US Attorney's Office — procurement fraud, government program fraud, environmental violations — can now point to a published DOJ-wide framework with defined declination criteria, fine reductions, and cooperation and remediation standards. Similarly, companies can now point to a published DOJ-wide framework for matters handled by other DOJ divisions, such as the Tax Division, the Environmental and Natural Resources Division, and the National Security Division.

The CEP makes clear, on a department-wide basis, that declinations are on the table for companies that self-disclose, cooperate, and remediate. Part II resolutions remove the threat of an independent monitor and offer penalty reductions of 50% to 75%. These steps give companies a stronger reason to consider self-disclosure — and to do so earlier in the process.

But the benefits carry risks.

- First, premature disclosure could expose a company to investigation before it has a clear picture of the scope of the misconduct. A company that discloses before it has gathered enough facts may fail to meet the CEP's requirement that the disclosure be timely, truthful, and accurate.
- Second, disclosure does not preclude further investigation by DOJ, relevant state prosecutors, or other agencies with regulatory jurisdiction over the misconduct.
- Third, a criminal resolution with DOJ under the CEP does not preclude civil liability (such as with the DOJ Civil Division), potential state liability, shareholder class actions, or administrative actions by agencies with jurisdiction.
- Finally, a company that has not yet taken meaningful steps to remediate may not qualify for the full range of benefits.

Companies must weigh the potential gains of early self-disclosure against these risks on a case-by-case basis.

Practical Considerations for Companies

Whether the new CEP ultimately represents a sea change or a more incremental shift in corporate enforcement, companies should be mindful of these updates and adjust their compliance programs and strategies accordingly. The CEP warrants a number of practical considerations for companies that may discover potential misconduct, including:

- **Early decision-making about self-disclosure:** Given the significant benefits available under Part I declinations or Part II NPAs, companies have even more incentive to move quickly to:

(1) engage counsel; (2) conduct an internal investigation; (3) evaluate whether there is genuine criminal exposure; and (4) meet the requirements necessary to obtain the maximum benefit under the CEP.

- **Strengthen compliance programs:** Ensure compliance procedures encourage internal reporting and identify and address concerns to increase the likelihood that disclosures to DOJ are new information.
- **Faster reporting timelines:** The "as soon as reasonably practicable" language means waiting to complete a full investigation before reporting may no longer be advisable for Part I declinations.
- **Broader exposure window:** The recidivism look-back now captures "similar misconduct" beyond the five-year window, requiring historical compliance audits going back further.
- **Source attribution:** The CEP requires "attribution of facts to specific sources rather than a general narrative of the facts." Although this does not change how companies conduct investigations, it calls for companies to attribute specific facts to specific witnesses when presenting findings to DOJ.
- **Reduced Part II certainty:** With the 50%-75% range (vs. flat 75%), companies with aggravating factors face more negotiation risk and less predictable outcomes.

Endnotes

[1] The 2026 CEP also appears to replace the Voluntary Self-Disclosure Policy issued in February 2023 by the Attorney General Advisory Committee, which advises the Attorney General on matters relating to the US Attorney's Offices.

[2] The CEP excludes Sherman Act cases, which remain subject to the Antitrust Division's separate leniency regime.

[3] DOJ announced the Criminal Division's Corporate Whistleblower Awards Pilot Program in May 2025, available here: https://www.justice.gov/criminal/criminal-division-corporate-whistleblower-awards-pilot-program. Latham & Watkins Client Alerts regarding the same are available here: DOJ Announces New Whistleblower Program (March 9, 2024); DOJ Launches New Whistleblower Incentive Program (August 6, 2024).