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BLOG

DOJ Launches Groundbreaking Department-Wide Corporate Enforcement Policy: What Companies Need to Know

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On Tuesday, March 10, 2026, the United States Department of Justice (DOJ or the Department) released its first Department-wide corporate enforcement policy (CEP) for all corporate criminal matters, which aims to promote "uniformity, predictability, and fairness in how [DOJ] pursues white-collar cases." [1] As we explain in more detail below, the new CEP is similar to the Criminal Division's May 12, 2025 CEP, but there are a few important differences. [2]

- First, the new CEP supersedes the existing nationwide patchwork of district-specific voluntary self-disclosure policies from various U.S. Attorney's offices throughout the country and DOJ Divisions. This new policy replaces all of the individual policies with a single framework that applies across all DOJ criminal matters except antitrust investigations under 15 U.S.C. §§ 1–38.
- Second, the largest benefit for companies has been slightly narrowed for "near miss" cases, in which companies are ineligible for declination because their level of self-reporting did not qualify as a voluntary self-disclosure and/or aggravating factors warranted criminal resolution. The new CEP allows a 50% to 75% reduction from the low end of the U.S. Sentencing Guidelines (USSG) fine range, rather than the full 75% mandated by the May 2025 Criminal Division CEP.
- Third, the new CEP requires all resolutions to be approved by the Assistant Attorney General for the relevant Division and/or the U.S. Attorney for the relevant district, in coordination with the Office of the Deputy Attorney General. This adds a layer of senior oversight that did not exist under the Criminal Division's May 2025 CEP.
- Finally, and as set forth in our Key Takeaways below, while the new CEP provides consistency in terms of the factors that DOJ will consider in making leniency decisions, given the wording of certain requirements, there will still be room for interpretation as to whether those requirements have been met—a decision that will remain squarely within DOJ's discretion. Accordingly, any company considering the critical decision of whether to self-disclose should carefully and thoroughly consider the risks and benefits, including the likelihood that the government attorneys responsible for the matter will deem the self-disclosure and the remediation sufficient to meet the requirements set forth in the CEP.

As detailed below, the new CEP divides resolutions into three "Parts," which a company may achieve depending on the timing and extent of the company's voluntary self-disclosure, cooperation, and remediation efforts, and the presence of aggravating factors. At one end of the spectrum, companies that voluntarily self-disclose misconduct and satisfy all policy requirements will receive a full declination. In "near-miss" cases, the new CEP still provides benefits,

including reduced penalties and non-prosecution agreements, depending on the circumstances. Finally, companies that fall outside the first two categories may still receive meaningful credit for cooperation and remediation.

PART I: FULL DECLINATIONS FOR CORPORATE CRIMES WHEN FOUR FACTORS ARE MET

Consistent with the Criminal Division's May 12, 2025 CEP, the new CEP provides that the Department will decline prosecution when a company meets the following four factors:

1. The company self-reports criminal conduct while meeting all voluntary disclosure requirements,
2. The company fully cooperates with the DOJ,
3. The company timely and appropriately remediates the harm, and
4. The company has no aggravating circumstances present.

The new CEP also requires disgorgement or forfeiture and restitution or victim compensation payments based on the misconduct at issue as part of declination agreements. Additionally, all declination agreements under the CEP will be made public.

(1.) The Company Must Voluntarily Self-Disclose Misconduct

To qualify as a voluntary self-disclosure under the CEP, the company's disclosure must meet five requirements. First, there must be a good-faith disclosure of the misconduct to the appropriate DOJ component (e.g., the Criminal Division, FBI, the local U.S. Attorney's Office).[3] Second, the DOJ must not have already known about the misconduct. Third, the company must not have had any preexisting obligation to disclose the misconduct to the DOJ. Fourth, the disclosure must be made before "an imminent threat of disclosure or government investigation." Fifth, the disclosure must be submitted within a "reasonably prompt time" after the company becomes aware of the misconduct. Where a whistleblower submits both an internal report and a disclosure to the DOJ before the company's disclosure, the company's disclosure may still be considered timely provided the company discloses as soon as reasonably practicable, and no later than 120 days after receiving the internal report.

(2.) The Company Must Fully Cooperate With the DOJ

Full cooperation under the new CEP requires a company to provide proactive, timely, and comprehensive cooperation beyond baseline DOJ expectations, including prompt disclosure of all relevant non-privileged facts, attribution of information to specific sources, identification of all individuals involved in the misconduct regardless of seniority—including a company's officers, employees, customers, competitors, or agents and third-parties—as well as the provision of rolling updates as new information becomes available. The focus on the disclosure of facts and evidence related to specific, identified individuals underscores the DOJ's continued commitment to "hold accountable the individual wrongdoers" by incentivizing companies to cooperate and "do the right thing," according to Attorney General Todd Blanche.[4] Full cooperation also requires the preservation and production of relevant documents, which the CEP defines as including all non-privileged information relating to the misconduct and involvement by those individuals. The provision of relevant documents also includes the production of overseas materials, facilitation of third-party productions, the avoidance of conflicts between internal investigative steps and the DOJ investigation, and making current and former personnel available for interviews, subject to applicable legal protections.

Cooperation credit is earned based on the scope, quality, impact, and timing of a company's efforts and may affect the form of resolution and applicable penalties; however, eligibility does not require waiver of attorney-client privilege or work-product protection, and the DOJ will consider the company's size, sophistication, and financial condition in assessing cooperation.

(3.) The Company Must Remediate the Harm in a Timely and Appropriate Manner

According to the new CEP, a company engages in "timely and appropriate remediation" when it has:

1. Conducted an analysis into the root cause of the issue and remediated/addressed that cause as appropriate;

2. Implemented an effective compliance and ethics program tailored to the company's size, risk profile, and business operations;
3. Appropriately disciplined employees;
4. Timely and appropriately remediated the harm;
5. Appropriately retained business records and prohibited the destruction or deletion of such; and
6. Taken any additional steps demonstrating that the company recognizes the seriousness of the misconduct and accepts responsibility for it and has implemented measures to reduce the chance of recurrence.

(4.) No Aggravating Circumstances Present

Finally, full declination is only available to a company provided that there are no aggravating circumstances related to the nature and seriousness of the offense, egregiousness or pervasiveness of the misconduct, severity of harm caused by the misconduct, or corporate recidivism.[5] If there are aggravating circumstances, prosecutors still retain discretion to recommend a declination based on weighing the severity of those aggravating circumstances and the company's voluntary self-disclosure, cooperation, and remediation.

PART II: "NEAR MISS" VOLUNTARY SELF-DISCLOSURES OR AGGRAVATING FACTORS WARRANTING RESOLUTIONS

The new CEP also details the DOJ's policy for companies that are ineligible for a declination because they tried to meet but "missed" some of the requirements. A "near miss" case is one in which the company has fully cooperated, and timely and appropriately remediated, but is ineligible for a declination under Part I because i) the company's self-reporting did not qualify as a voluntary self-disclosure under the terms of the CEP; and/or ii) aggravating factors warrant a criminal resolution. In these cases, the DOJ: (1) must provide a Non-Prosecution Agreement (NPA), absent a particularly egregious circumstance or multiple aggravating circumstances, and allow the NPA to have a term of fewer than three years; (2) must not require an independent compliance monitor; and (3) must reduce any fine by 50% to 75% off the low end of the USSG fine range. As noted above, the adjusted fine reduction is the only change to this section from the Criminal Division's May 12, 2025 CEP.

PART III: BENEFITS/RESOLUTIONS IN OTHER CASES

Per the new CEP, companies that do not qualify for benefits under Part I or Part II can still receive ***some*** benefits under Part III when they fully cooperate and timely and appropriately remediate. Under the new CEP, "the company will ***not*** receive, and the Department will ***not*** recommend to a sentencing court, a reduction of more than 50% off the fine under the USSG." However, if the company fully cooperates and timely and appropriately remediates, there is a presumption that the reduction would be measured from the low end of the USSG. Otherwise, prosecutors will use other points within the range based on the circumstances—including recidivism—while considering the factors under USSG § 8C2.8.[6]

KEY TAKEAWAYS

- The DOJ's move to a single, Department-wide CEP brings consistency and predictability to the factors that will be considered by federal prosecutors across the country when evaluating a company's eligibility for a declination, non-prosecution agreement, or some other form of leniency. At the same time, this new framework limits the ability of a company to secure particular benefits by self-reporting in one jurisdiction rather than a different jurisdiction because of variations in the factors that each jurisdiction considers in making a declination, non-prosecution, or other leniency decision.
- While the CEP sets out specific requirements to be eligible for a declination or non-prosecution agreement, many of the requirements are worded in a way that makes them susceptible to differing interpretations, and whether those requirements are met will be determined by the particular government attorneys responsible for the matter. For example, the critical requirements of whether a company's self-disclosure was made prior to "an imminent threat of disclosure or government investigation" and within a "reasonably prompt time" after the company becomes aware of the misconduct so as to qualify as a "voluntary self-disclosure" making the company eligible for a declination is

subject to interpretation and will be determined by the DOJ. Similarly, whether a company's remediation was sufficiently "timely and appropriate" to render it eligible for a declination is also the DOJ's decision.

- Accordingly, any company considering the critical decision of whether to self-disclose should carefully and thoroughly consider the risks and benefits—including the likelihood that the government attorneys will deem the self-disclosure and the remediation sufficient to meet the requirements set forth in the CEP—with the guidance of experienced counsel.
- The new CEP shows the DOJ's continued commitment to holding individuals accountable while providing paths for corporations to secure leniency by meeting certain requirements.

If you have any questions regarding this or related subjects or if you need assistance, please contact the authors of this article, Suzanne Jaffe Bloom (Partner and Co-Chair, White Collar & Government Investigations Practice), Jack Knight (Partner, White Collar & Government Investigations Practice and Co-Chair, Charlotte Litigation Practice), Patrick Doerr (Partner, White Collar & Government Investigations Practice), Dainia Jabaji (Of Counsel, White Collar & Government Investigations Practice), Christina Zaldivar (Associate, White Collar & Government Investigations Practice), Kennedy M. Mackey (Associate, General Litigation) or your Winston & Strawn relationship attorney. You can also visit our White Collar & Government Investigations Practice webpage for more information on this and related subjects.

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[1] Department of Justice Office of Public Affairs, *Department of Justice Releases First-Ever Corporate Enforcement Policy for All Criminal Cases* (March 10, 2026), https://www.justice.gov/opa/pr/department-justice-releases-first-ever-corporate-enforcement-policy-all-criminal-cases.

[2] Winston has previously prepared an in-depth analysis on the 2025 CEP. *See* Suzanne Jaffe Bloom et al., *Rebalancing the Sticks and the Carrots? A New DOJ White-Collar Enforcement Plan* (May 20, 2025), https://www.winston.com/en/blogs-and-podcasts/investigations-enforcement-and-compliance-alerts/rebalancing-the-sticks-and-the-carrots-a-new-doj-white-collar-enforcement-plan.

[3] Note that good-faith disclosures to one component "where the matter is later brought to another appropriate component for investigation" will also qualify. This seems to allow companies some opportunity to consider the most favorable audience for disclosure (e.g., main justice versus the local U.S. Attorney's Office in a case where there is local harm).

[4] *See* Department of Justice Office of Public Affairs, *supra* note 1.

[5] "Corporate recidivism" is defined in the new CEP as 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.

[6] The factors under U.S.S.G. § 8C2.8 include the need for the sentence to reflect the seriousness of the offense, the organization's role in the offense, collateral consequences of conviction, and nonpecuniary loss, among others.

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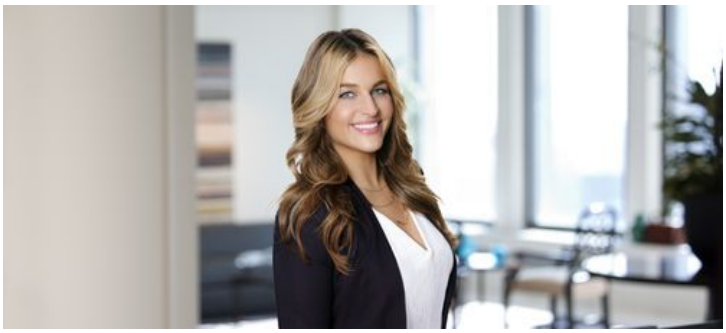

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