New DOJ corporate enforcement and voluntary disclosure policy brings uniformity to cooperation credit in federal criminal cases

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The U.S. Department of Justice ("DOJ" or the "Department") on March 10 announced a new Corporate Enforcement and Voluntary Disclosure Policy (the "Department-wide CEP" or "Policy") that establishes a department-wide framework governing how prosecutors evaluate voluntary self-disclosure, cooperation, and remediation by companies in criminal cases.

Applicable to all DOJ criminal components except the Antitrust Division, the Policy builds on last year's update to the Criminal Division's policy (of the same name) that was aimed at increasing predictability in corporate resolutions and seeks to address a longstanding challenge for companies navigating potential disclosures: the existence of multiple, overlapping enforcement policies with differing standards and benefits.

Background: the rise of voluntary disclosure and cooperation credit programs

For nearly a decade, the DOJ has promoted the benefits of voluntary disclosure and cooperation as mechanisms for resolving corporate criminal misconduct. One of DOJ's initial efforts to formalize these incentives came in 2017, when the Criminal Division adopted the Corporate Enforcement Policy ("CEP").

That policy, which grew out of the Fraud Section's Foreign Corrupt Practices Act Unit's (FCPA) Pilot Program and Voluntary Disclosure Program, established a framework under which companies that voluntarily disclosed misconduct, fully cooperated with investigators, and undertook timely remediation could receive significant benefits — including the potential for a declination.

Since its inception, practitioners and companies have expressed concern that the policy lacked sufficient clarity regarding the tangible benefits of self-disclosure and cooperation. In response to these concerns and continued calls for greater certainty around potential enforcement outcomes, DOJ revised the policy multiple times, most recently in May 2025.

With the Criminal Division's original CEP gaining traction, in 2022, DOJ leadership directed each DOJ component to adopt its own formal written policy to incentivize voluntary self-disclosure by companies. In the years that followed, several components did just that, issuing policies describing the path to leniency through voluntary disclosure and cooperation. These included policies from the National Security Division, the Environmental and Natural Resources Division, and several U.S. Attorneys' Offices — including the Southern District of New York, which announced (https://bit.ly/40o5NEj) its iteration just last month.

As announced on March 10, the Department-wide CEP establishes a unified framework that "transparently describes" how prosecutors evaluate and reward voluntary disclosures and cooperation by companies that identify criminal misconduct.

Together, these developments produced a patchwork of policies across DOJ: while each framework encouraged voluntary self-disclosure, cooperation, and remediation, the applicable criteria and potential benefits varied. Of course, many corporate investigations involve multiple DOJ components.

As a result of the patchwork of policies, companies frequently faced uncertainty about which policy would apply and how cooperation credit would be calculated and rewarded. The new Department-wide CEP is seemingly designed to eliminate that uncertainty by establishing a single approach

for evaluating voluntary disclosures and cooperation across all of DOJ's criminal enforcement components (with the notable exception of Antitrust, which maintains its own policy).

A new, unified Department of Justice policy

As announced on March 10, the Department-wide CEP establishes a unified framework that "transparently describes" how prosecutors evaluate and reward voluntary disclosures and cooperation by companies that identify criminal misconduct.

Building on the Department's effort to bring greater consistency to corporate enforcement, the policy largely adopts the structure and core features of the CEP, including the decision tree set forth in Appendix A illustrating the three potential paths for a corporate resolution — declination, NPA, or other resolution — based on key factors like disclosure and cooperation.

The new Department-wide CEP represents DOJ's most significant step to date toward bringing greater transparency and consistency to its evaluation of voluntary disclosure and cooperation, and it underscores the Department's expectation that companies will promptly disclose criminal misconduct and cooperate.

At the same time, applying a single framework across DOJ introduces certain nuances, reflected in several targeted updates to the policy. We highlight several below.

A modest scaling back of benefits for some companies not entitled to a declination

As with the previous version of the CEP, a company can still obtain significant benefits for cooperating with DOJ even if it misses the window for voluntary disclosure or other aggravating factors are present, *e.g.*, a history of recidivism. This is the so-called "near miss" category, which is referenced as Part II in the CEP.

For companies in this category, the prior CEP provided eligibility for a non-prosecution agreement ("NPA") and a reduction of 75% off the lower end of the fine range in the United States Sentencing Guidelines ("U.S.S.G."). The Department-wide CEP trims this expectation slightly — offering a reduction of 50–75% off the lower end of U.S.S.G.-prescribed fine range.

Nevertheless, this modest revision to the "near-miss" category is unlikely to disincentivize companies from voluntarily disclosing, cooperating, and receiving the potential benefits of an NPA.

The initial disclosure must be made to the Department of Justice

To qualify for voluntary self-disclosure credit, the Department-wide CEP requires that the disclosure be made to the appropriate DOJ criminal component and (1) be made "prior to an imminent threat of disclosure or government investigation" and (2) be truly voluntary — meaning, the company had "no preexisting obligation to disclose the misconduct" to DOJ.

The new Policy makes explicit something that was implicit in the previous policy: Disclosure made to federal regulatory agencies, state and local governments, or civil enforcement agencies "generally do not qualify."

The Policy states that "good faith" disclosures to a regulatory body or civil enforcement agency "may qualify if appropriate under the circumstances."

The Department's explicit discussion reinforces the importance of distinguishing between criminal and non-criminal misconduct early. Voluntary disclosure "credit" will not be available to companies that artificially limit an investigation or ignore indicia of criminal misconduct and make a more limited disclosure to a civil agency or regulator.

Conflicts can potentially still occur

Even with a uniform policy now applicable across DOJ components, one practical complication remains: Multiple components may still have a potential claim to investigate or prosecute the same conduct.

The Department-wide CEP notes briefly that a voluntary disclosure must be made to the "appropriate component" of the Department. The directive appears intended to prevent companies from engaging in forum shopping when making an initial disclosure — for example, by directing a disclosure to a tertiary component perceived as more likely to grant favorable treatment while the conduct falls squarely within the jurisdiction of another DOJ component.

Once again, the Department commits to rewarding "good faith" efforts to disclose misconduct to the "appropriate" component.

And there's more...

Several additional aspects of the policy are worth noting.

First, the always-helpful decision tree in Appendix A includes a few discrete modifications, including a disclaimer that the Policy's text controls over the graphic. This disclaimer is meaningful because the decision tree, as updated, suggests that companies that voluntarily disclose misconduct, fully cooperate, and remediate misconduct, but still have aggravating circumstances will be entitled to either a resolution under Part I (declination) or Part II (which includes a non-prosecution agreement). (A careful review of changes to the

box "Part I Declination Still Appropriate" will show the line that previously pointed to a Part III resolution has been removed.)

However, the language in Part II of the Policy states that a Part II NPA resolution may not be appropriate — and therefore a company may only be eligible for a Part III resolution — if there are "particularly egregious or multiple aggravating circumstances."

Second, the Department now expressly instructs prosecutors to move efficiently in evaluating voluntary disclosures — which was the primary theme in SDNY's now-defunct policy. The Department-wide CEP directs prosecutors to gather the relevant facts, make determinations as to a company's eligibility for leniency, and inform the company of their conclusions "as soon as practicable."

While DOJ has long expressed an intention to move quickly in evaluating voluntary disclosures, the Policy formalizes that expectation by embedding it directly in the Department's written framework.

Third, the Policy establishes criteria for determining monetary penalties for companies that do qualify for Part I or Part II resolutions. It directs prosecutors to determine the applicable fine range by applying the factors set forth in U.S.S.G. § 8C2.8 — factors that are well-known to white-collar practitioners and should help define discussions with DOJ during negotiations.

Finally, the Policy sets forth the various approvals within the Department that must be obtained for resolution, including coordination with the Office of the Deputy Attorney General. There is nothing new about this approval process; however, as a practical matter, rolling out a uniform policy across DOJ's criminal components and U.S. Attorneys' Offices will likely increase oversight from Main Justice, at least in the near term while the Department works to ensure consistent application of the new framework.

Conclusion

The new Department-wide CEP represents DOJ's most significant step to date toward bringing greater transparency and consistency to its evaluation of voluntary disclosure and cooperation, and it underscores the Department's expectation that companies will promptly disclose criminal misconduct and cooperate. For those that do not, DOJ sends a clear message: The path to leniency will be narrow.

While the Policy's uniform incentive structure and clear roadmap should assist companies in evaluating their options, the decision whether — and when — to disclose potential misconduct remains a complex calculus requiring careful consideration of criminal exposure, regulatory obligations, and the potential benefits and risks of early engagement with DOJ.

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