

Regulatory Alert

Regulatory Insights

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DOJ Extends Corporate Enforcement Policy Department-Wide

KPMG Regulatory Insights:

Extension: *The CEP builds on a prior Criminal Division Corporate Enforcement Policy that applied to white collar crimes prosecuted by the Criminal Division alone; the Department-wide CEP now supersedes all DOJ corporate enforcement policies.*

Uniform Approach: *Directive to harden financial and digital systems against cyber threats, support victims, and counter attacks through “law enforcement, diplomacy, and potential offensive actions.”*

Disclosure: *The DOJ encourages and rewards early, voluntary self-disclosure of misconduct with multiple resolution paths.*

Compliance Programs: *Investing in strong compliance programs that can function as both offense prevention and resolution mitigation will benefit corporations.*

The Department of Justice (DOJ or Department) has [released](#) a Department-wide Corporate Enforcement and Voluntary Self-Disclosure Policy (CEP) that is applicable to all corporate criminal matters handled by the DOJ, excluding antitrust matters. The CEP applies across DOJ components (e.g., DOJ Criminal Division) and supersedes component-specific and U.S. Attorney’s Office-specific corporate enforcement policies currently in effect.

The CEP is divided into three “paths”:

I. **Part I** – Declination Under the CEP, describing a path of voluntary self-disclosure of misconduct to the DOJ

II. **Part II** – “Near Miss” Voluntary Self-Disclosures or Aggravating Factors Warranting Resolutions, describing an alternate path for companies whose self-disclosures do not qualify under Part I or for which there were aggravating factors

III. **Part III** – Resolutions in Other Cases, reserving discretion for the DOJ to determine the appropriate resolution for cases not covered by Part I or Part II

The CEP also contains an appendix defining in detail its key terms: “voluntary self-disclosure,” “full cooperation,” and “timely and appropriate remediation.”

Part I – Declination Under the CEP:

The CEP establishes outcomes tied to voluntary self-disclosure, cooperation, and remediation. Under the CEP, the DOJ will decline to prosecute a company for criminal conduct (i.e., provide a declination) when:

- Companies “voluntarily self-disclose” misconduct to an appropriate DOJ criminal component, “fully cooperate” with the DOJ, “timely and appropriately remediate” the misconduct (as each of those terms is defined in the CEP – see below), and have no “aggravating circumstances”.
- Companies with “aggravating circumstances” may still be considered for a declination based on prosecutors weighing of the severity of those circumstances and the company’s voluntary self-disclosure, cooperation, and remediation.
- As part of a declination, the company will be required to pay disgorgement/forfeiture and restitution/victim compensation payments resulting from the misconduct at issue. All declinations will be made public.

Part II - “Near Miss” Voluntary Self-Disclosure:

Benefits may still be available to companies that fully cooperate and timely and appropriately remediate but are ineligible for a declination solely because they:

- Acted in good faith by self-reporting but did not meet the CEP’s voluntary self-disclosure definition, and/or
- Have aggravating factors warranting a criminal resolution.

In these instances, the CEP requires the DOJ to:

- Provide a Non-Prosecution Agreement (absent particularly egregious or multiple aggravating circumstances.)
- Allow a term of fewer than three years.
- Not require an independent compliance monitor.
- Provide a reduction of at least 50 percent, but not more than 75 percent, off the low end of the U.S. Sentencing Guidelines fine range.

Part III - Resolution in Other Cases:

Where a company is not eligible for the declination path (Part I) or the “near miss” path (Part II), prosecutors

retain discretion to determine the appropriate resolution (including form, term length, compliance obligations, and monetary penalty). With respect to the monetary penalty, the DOJ will not recommend a reduction of more than 50 percent off the fine under the U.S. Sentencing Guidelines.

The CEP also states that disclosures made only to federal regulatory agencies (other than the DOJ), state and local governments, or civil enforcement agencies generally do not qualify as voluntary self-disclosure under the CEP, though good-faith disclosures to such entities may be considered by the DOJ on the facts and at the DOJ’s discretion.

Definitions

Voluntary self-disclosure: The CEP defines voluntary self-disclosure as:

- Good-faith disclosure of the misconduct to the appropriate DOJ component.
- Misconduct not previously known to the DOJ.
- No preexisting obligation to disclose the misconduct to the DOJ.
- Disclosure made prior to an imminent threat of disclosure or government investigation.
- Disclosure within a “reasonably prompt time” after the company becomes aware of the misconduct (with the burden on the company to demonstrate timeliness).

Corporate Whistleblower Awards Pilot Program

Exception: The CEP includes an exception in situations when a whistleblower makes both an internal report to a company and a whistleblower submission to the DOJ, under which the company may still qualify for a declination – even if it self-discloses after the whistleblower submits to the Department - if the company self-reports the conduct to the DOJ as soon as reasonably practicable but no later than 120 days after receiving the whistleblower’s internal report, and also meets the other requirements for voluntary self-disclosure and a declination under the CEP.

Full Cooperation: The CEP defines “full cooperation” to include:

- Timely, truthfully, and accurately disclosing relevant facts and non-privileged evidence, including

information derived from a company’s internal investigation and identification of individuals involved in the misconduct.

- Proactive cooperation with the DOJ, including timely disclosure of all relevant facts even when not specifically requested.
- Timely and voluntarily preserving, collecting, and disclosing relevant documents, including documents maintained overseas and produced by third parties. (Note: Where a company claims disclosure is prohibited or restricted by foreign law, the company bears the burden of establishing the restriction and identifying reasonable and legal alternatives that allow the DOJ to preserve and obtain necessary evidence.)
- “De-conflicting” by coordinating internal investigative steps with the DOJ to avoid interfering with DOJ investigations.
- Subject to individuals’ Fifth Amendment rights, makes officers, employees, and agents with relevant information available for DOJ interviews.

Cooperation Credit: The CEP states that “credit for cooperation takes many forms and is calculated differently depending on the degree to which a company cooperates with the government’s investigation and the commitment the company demonstrates in doing so. Where a criminal resolution is warranted, the extent and quality of a company’s cooperation will be an important part of the Department’s overall analysis of the case and may impact the proposed form of the resolution, as well as the fine range and fine amount.”

Timely and Appropriate Remediation: The CEP defines “timely and appropriate remediation” to include:

- Root cause analysis.
- Implementation of an effective compliance and ethics program.
- Taking appropriate disciplinary action against those responsible for misconduct through direct participation or oversight failure.
- Implementation of appropriate controls relating to business records retention and deletion, including with respect to personal communications and messaging applications.

The CEP states that eligibility for benefits is not predicated on waiver of attorney-client privilege or work product protection.

Note: Prior to the Department-wide expanded CEP, the DOJ’s Criminal Division had a Corporate Enforcement Policy which was applicable only to matters handled by the Criminal Division (and has now been superseded). The DOJ’s Criminal Division was actively involved in drafting this Department-wide CEP, which contains many of the same features and definitions that were included in the Criminal Division’s CEP. KPMG Regulatory Insights most recent materials on the Criminal Division’s Corporate Enforcement Policy can be found here:

- [KPMG Regulatory Alert on the January 2023 Criminal Divisions Policy revisions](#)
- [KPMG Special Alert on the May 2025 revisions](#)

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