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DOJ Criminal Division's Revision of the Corporate Enforcement Policy

The DOJ's latest revision to the Corporate Enforcement and Voluntary Disclosure Policy, announced on May 12, 2025, provides much needed clarity on the Department's expected approach to white collar enforcement. Notably, the May 12 update presents the clearest path yet to a declination, which is a formal statement memorializing the DOJ's decision not to prosecute violations of federal law for companies that meet certain conditions.[1] The revisions – including updates to the monitor selection policy and the Whistleblower Program – collectively seek to ease the burden of enforcement on companies that exhibit a good faith commitment to compliance by self-reporting and fully remediating misconduct. They also continue the trend that began with the Yates Memorandum in 2015, shifting focus away from the corporate entity to culpable individuals.[2]

In the past, a voluntary self-report only earned a presumption of a declination. The revised policy now promises a declination to qualifying companies, while providing for clearly defined Non-Prosecution Agreements (NPAs) under circumstances in which a company does not quite qualify for a declination. It further specifies that, to qualify for the benefits offered under the policy, disclosures must be made to, or at least include, the Criminal Division, potentially increasing the role of the DOJ's main office, as opposed to U.S. Attorney's offices.

Guarantees of any kind are historically rare, particularly in the enforcement space. This development presents an unusual opportunity for qualifying companies to obtain a clean slate with relatively low risk. Accordingly, companies, their Boards, and compliance personnel are advised to identify any outstanding issues that may be eligible for self-disclosure under the revised CEP, and consider the opportunity presented by this new policy.

Background and Analysis

Under the prior CEP, companies that voluntarily self-disclosed, fully cooperated, and timely and appropriately remediated were entitled to a presumption of declination, absent aggravating circumstances. By contrast, the revised CEP provides certainty regarding the outcome of self-disclosures. The CEP now provides that the Criminal Division "will decline" prosecution where a company: (1) voluntarily self-discloses misconduct; (2) fully cooperates with the Division's investigation; (3) timely and appropriately remediates; and (4) has no aggravating circumstances.[3] [4] The CEP makes clear that companies with aggravating circumstances may still be entitled to a declination depending on the severity of the aggravating factors and the degree of cooperation and remediation.

[1] Matthew R. Galeotti, *Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime*, U.S. Dept. of Justice, Crim. Div. (May 12, 2025).

[2] Deputy Attorney General Sally Q. Yates, *Individual Accountability for Corporate Wrongdoing*, U.S. Dept. of Justice (September 9, 2015).

[3] Justice Manual § 9-47.120.

[4] Aggravating circumstances may include those "related to the nature and seriousness of the offense, egregiousness or pervasiveness of the misconduct within the company, severity of harm caused by the misconduct, or criminal adjudication or resolution within the last five years based on similar misconduct by the entity engaged in the current misconduct." Justice Manual § 9-47.120.

Even where a company does not "voluntarily" self-disclose – either because the disclosure was not timely, or because (unknown to the company) the government was already aware of the misconduct – the company is still entitled to an NPA under the CEP. The same applies to companies with "aggravating factors that warrant a criminal resolution." The revised CEP dictates that, except where there are "particularly egregious or multiple aggravating circumstances," a company in either of these "near miss" categories will receive an NPA with a term of fewer than three years, no monitorship requirement, and a 75% reduction in fine from the low end of the range recommended by the U.S. Sentencing Guidelines. Where a company meets some, but not all of the factors for a declination or a "near miss" NPA, the CEP gives prosecutors discretion over the form, term, obligations, and penalty of any resolution. The Criminal Division may recommend a fine reduction of up to 50% for companies that fully cooperate and timely and appropriately remediate.

These policy changes, geared to reduce the burdens of enforcement on corporations, are in keeping with the new administration's America First policy, which is also reflected in the DOJ's updated investigative priorities. Though observers have noted a lull in enforcement over the past several months,[5] the DOJ appears poised to re-start the white collar engine and focus on several areas impacting U.S. commerce, including procurement fraud, trade and customs fraud, complex money laundering, and fraud on U.S. investors. Notably, the Department also included "bribery and associated money laundering that impact U.S. national interests," as one of its top ten priorities. This is the first signal since the President's February 10, 2025, Executive Order pausing FCPA investigations that suggests investigations involving similar subjects may resume in some fashion.[6]

Regardless of the category of investigation, it appears that enforcement will focus more on individuals rather than corporations. The Criminal Division views prosecution of individuals as the "first priority" in white collar enforcement, and considers individual prosecutions sufficient to address "low-level corporate misconduct."[7] Even for more serious conduct, the revisions to the CEP suggest that DOJ considers it sufficient to decline to prosecute cooperating companies, while using their cooperation as a tool in its investigations of culpable individuals.

These revisions mean that companies – particularly those that have identified and removed any culpable individuals and implemented other remedial measures – may have an opportunity for closure on any lingering instances of past misconduct. The promise of declination for qualifying companies reduces the risk that a self-reporting organization will find itself charged, absent serious aggravating factors. For companies hesitant about self-disclosure, the new CEP offers an opportunity for favorable resolutions even absent perfect conditions where aggravating circumstances exist.

Companies considering self-disclosure may not find a more favorable time to engage with the government, given the clear path to declination that now exists under the current administration. In addition, the expansion of the Whistleblower Program to new categories of violations means that such companies should also be cognizant of the possibility that misconduct will be brought to the government's attention by others first, depriving the company of full credit for a "voluntary" self-disclosure. It is unclear whether individual U.S. Attorney's Offices are subject to the new CEP – so companies considering self-disclosure must deal directly with the Criminal Division in order to benefit from the declination policy. Companies should be aware, however, that any such disclosure may result in individual prosecutions, even where the company itself receives a declination.

[5] Emily Saul, *Some Signals Appear Trump Administration Will Enforce White-Collar Crime.* Law.com (April 30, 2025), available here.

[6] Executive Order 14209, *Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security* (Feb. 10, 2025).

[7] Matthew R. Galeotti, *Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime*, U.S. Dept. of Justice, Crim. Div. (May 12, 2025).

Takeaways

- Changes to the CEP mean that companies meeting certain criteria are promised either a declination or an NPA when self-disclosing corporate misconduct.
- Even companies that do not meet the criteria for a declination may be able to obtain an NPA or DPA on favorable terms under the new CEP.
- Companies that have already remediated should consider whether this is an opportune time for disclosure, and the finality that can come with it.

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